

Rule 52. Findings by the Court; Judgment on Partial Findings

(a) EFFECT. 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 judgment shall be entered pursuant to Rule 58; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. It will be sufficient if the findings of fact and conclusions of law are stated orally and recorded in open court following the close of the evidence or appear in an opinion or memorandum of decision filed by the court. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in subdivision (c) of this rule.

(b) AMENDMENT. On a party's motion filed no later than 10 days after entry of judgment, the court may amend its findings—or make additional findings—and may amend the judgment accordingly. The motion may accompany a motion for a new trial under Rule 59. When findings of fact are made in actions tried without a jury, the sufficiency of the evidence supporting the findings may be later questioned whether or not in the district court the party raising the question objected to the findings, moved to amend them, or moved for partial findings.

(c) JUDGMENT ON PARTIAL FINDINGS. If during a trial without a jury a party has been fully heard on an issue and the court finds against the party on that issue, the court may enter judgment as a matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue, or the court may decline to render any judgment until the close of all the evidence. Such a judgment shall be supported by findings of fact and conclusions of law as required by subdivision (a) of this rule.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Jan. 21, 1963, eff. July 1, 1963; Apr. 28, 1983, eff. Aug. 1, 1983; Apr. 29, 1985, eff. Aug. 1, 1985; Apr. 30, 1991, eff. Dec. 1, 1991; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 27, 1995, eff. Dec. 1, 1995.)

NOTES OF ADVISORY COMMITTEE ON RULES—1937

See [former] Equity Rule 70½, as amended Nov. 25, 1935 (Findings of Fact and Conclusions of Law), and U.S.C., Title 28, [former] §764 (Opinion, findings, and conclusions in action against United States) which are substantially continued in this rule. The provisions of U.S.C., Title 28, [former] §§773 (Trial of issues of fact; by court) and [former] 875 (Review in cases tried without a jury) are superseded insofar as they provide a different method of finding facts and a different method of appellate review. The rule stated in the third sentence of *Subdivision (a)* accords with the decisions on the scope of the review in modern federal equity practice.

It is applicable to all classes of findings in cases tried without a jury whether the finding is of a fact concerning which there was conflict of testimony, or of a fact deduced or inferred from uncontradicted testimony. See *Silver King Coalition Mines, Co. v. Silver King Consolidated Mining Co.*, 204 Fed. 166 (C.C.A.8th, 1913), cert. den. 229 U.S. 624 (1913); *Warren v. Keep*, 155 U.S. 265 (1894); *Furrer v. Ferris*, 145 U.S. 132 (1892); *Tilghman v. Proctor*, 125 U.S. 136, 149 (1888); *Kimberly v. Arms*, 129 U.S. 512, 524 (1889). Compare *Kaeser & Blair, Inc., v. Merchants' Ass'n*, 64 F.(2d) 575, 576 (C.C.A.6th, 1933); *Dunn v. Trefry*, 260 Fed. 147, 148 (C.C.A.1st, 1919).

In the following states findings of fact are required in all cases tried without a jury (waiver by the parties being permitted as indicated at the end of the listing): Arkansas, Civ.Code (Crawford, 1934) §364; California, Code Civ.Proc. (Deering, 1937) §§632, 634; Colorado, 1 Stat. Ann. (1935) Code Civ.Proc. §§232, 291 (in actions before referees or for possession of and damages to land); Connecticut, Gen.Stats. §§5660, 5664; Idaho, 1 Code Ann. (1932) §§7-302 through 7-305; Massachusetts (equity cases), 2 Gen.Laws (Ter.Ed., 1932) ch. 214, §23; Minnesota, 2 Stat. (Mason, 1927) §9311; Nevada, 4 Comp.Laws (Hillyer, 1929) §8783-8784; New Jersey, Sup.Ct. Rule 113, 2 N.J.Misc. 1197, 1239 (1924); New Mexico, Stat. Ann. (Courtright, 1929) §105-813; North Carolina, Code (1935) §569; North Dakota, 2 Comp.Laws Ann. (1913) §7641; Oregon, 2 Code Ann. (1930) §2-502; South Carolina, Code (Michie, 1932) §649; South Dakota, 1 Comp.Laws (1929) §§2525-2526; Utah, Rev.Stat. Ann. (1933) §104-26-2, 104-26-3; Vermont (where jury trial waived), Pub. Laws (1933) §2069; Washington, 2 Rev.Stat. Ann. (Remington, 1932) §367; Wisconsin, Stat. (1935) §270.33. The parties may waive this requirement for findings in California, Idaho, North Dakota, Nevada, New Mexico, Utah, and South Dakota.

In the following states the review of findings of fact in all non-jury cases, including jury waived cases, is assimilated to the equity review: Alabama, Code Ann. (Michie, 1928) §§9498, 8599; California, Code Civ.Proc. (Deering, 1937) §956a; but see 20 Calif.Law Rev. 171 (1932); Colorado, *Johnson v. Kountze*, 21 Colo. 486, 43 Pac. 445 (1895), *semble*; Illinois, *Baker v. Hinricks*, 359 Ill. 138, 194 N.E. 284 (1934), *Weininger v. Metropolitan Fire Ins. Co.*, 359 Ill. 584, 195 N.E. 420, 98 A.L.R. 169 (1935); Minnesota, *State Bank of Gibbon v. Walter*, 167 Minn. 37, 38, 208 N.W. 423 (1926), *Waldron v. Page*, 191 Minn. 302, 253 N.W. 894 (1934); New Jersey, N.J.Comp.Stat. (2 Cum.Supp. 1911-1924) Title 163, §303, as interpreted in *Bussy v. Hatch*, 95 N.J.L. 56, 111 A. 546 (1920); New York, *York Mortgage Corporation v. Clotar Const. Corp.*, 254 N.Y. 128, 133, 172 N.E. 265 (1930); North Dakota, Comp.Laws Ann. (1913) §7846, as amended by N.D.Laws 1933, ch. 208, *Milnor Holding Co. v. Holt*, 63 N.D. 362, 370, 248 N.W. 315 (1933); Oklahoma, *Wichita Mining and Improvement Co. v. Hale*, 20 Okla. 159, 167, 94 Pac. 530 (1908); South Dakota, *Randall v. Burk Township*, 4 S.D. 337, 57 N.W. 4 (1893); Texas, *Custard v. Flowers*, 14 S.W.2d 109 (1929); Utah, Rev.Stat. Ann. (1933) §104-41-5; Vermont, *Roberge v. Troy*, 105 Vt. 134, 163 Atl. 770 (1933); Washington, 2 Rev.Stat. Ann. (Remington, 1932) §§309-316; *McCullough v. Puget Sound Realty Associates*, 76 Wash. 700, 136 Pac. 1146 (1913), but see *Cornwall v. Anderson*, 85 Wash. 369, 148 Pac. 1 (1915); West Virginia, *Kinsey v. Carr*, 60 W.Va. 449, 55 S.E. 1004 (1906), *semble*; Wisconsin, Stat. (1935) §251.09; *Campbell v. Sutliff*, 193 Wis. 370, 214 N.W. 374 (1927); *Gessler v. Erwin Co.*, 182 Wis. 315, 193 N.W. 363 (1924).

For examples of an assimilation of the review of findings of fact in cases tried without a jury to the review at law as made in several states, see Clark and Stone, *Review of Findings of Fact*, 4 U. of Chi.L.Rev. 190, 215 (1937).

NOTES OF ADVISORY COMMITTEE ON RULES—1946 AMENDMENT

Subdivision (a). The amended rule makes clear that the requirement for findings of fact and conclusions of law thereon applies in a case with an advisory jury. This removes an ambiguity in the rule as originally

stated, but carries into effect what has been considered its intent. 3 *Moore's Federal Practice* (1938) 3119; *Hurwitz v. Hurwitz* (App.D.C. 1943) 136 F.(2d) 796.

The two sentences added at the end of Rule 52(a) eliminate certain difficulties which have arisen concerning findings and conclusions. The first of the two sentences permits findings of fact and conclusions of law to appear in an opinion or memorandum of decision. See, e.g., *United States v. One 1941 Ford Sedan* (S.D.Tex. 1946) 65 F.Supp. 84. Under original Rule 52(a) some courts have expressed the view that findings and conclusions could not be incorporated in an opinion. *Detective Comics, Inc. v. Bruns Publications* (S.D.N.Y. 1939) 28 F.Supp. 399; *Pennsylvania Co. for Insurance on Lives & Granting Annuities v. Cincinnati & L. E. R. Co.* (S.D.Ohio 1941) 43 F.Supp. 5; *United States v. Aluminum Co. of America* (S.D.N.Y. 1941) 5 Fed.Rules Serv. 52a.11, Case 3; see also s.c., 44 F.Supp. 97. But, to the contrary, see *Wellman v. United States* (D.Mass. 1938) 25 F.Supp. 868; *Cook v. United States* (D.Mass. 1939) 26 F.Supp. 253; *Proctor v. White* (D.Mass. 1939) 28 F.Supp. 161; *Green Valley Creamery, Inc. v. United States* (C.C.A.1st, 1939) 108 F.(2d) 342. See also *Matton Oil Transfer Corp. v. The Dynamic* (C.C.A.2d, 1941) 123 F.(2d) 999; *Carter Coal Co. v. Litz* (C.C.A.4th, 1944) 140 F.(2d) 934; *Woodruff v. Heiser* (C.C.A.10th, 1945) 150 F.(2d) 869; *Coca-Cola Co. v. Busch* (E.D.Pa. 1943) 7 Fed.Rules Serv. 59b.2, Case 4; *Oglebay, Some Developments in Bankruptcy Law* (1944) 18 J. of Nat'l Ass'n of Ref. 68, 69. Findings of fact aid in the process of judgment and in defining for future cases the precise limitations of the issues and the determination thereon. Thus they not only aid the appellate court on review (*Hurwitz v. Hurwitz* (App.D.C. 1943) 136 F.(2d) 796) but they are an important factor in the proper application of the doctrines of res judicata and estoppel by judgment. Nordbye, *Improvements in Statement of Findings of Fact and Conclusions of Law*, 1 F.R.D. 25, 26-27; *United States v. Forness* (C.C.A.2d, 1942) 125 F.(2d) 928, cert. den. (1942) 316 U.S. 694. These findings should represent the judge's own determination and not the long, often argumentative statements of successful counsel. *United States v. Forness*, *supra*; *United States v. Crescent Amusement Co.* (1944) 323 U.S. 173. Consequently, they should be a part of the judge's opinion and decision, either stated therein or stated separately. *Matton Oil Transfer Corp. v. The Dynamic*, *supra*. But the judge need only make brief, definite, pertinent findings and conclusions upon the contested matters; there is no necessity for over-elaboration of detail or particularization of facts. *United States v. Forness*, *supra*; *United States v. Crescent Amusement Co.*, *supra*. See also *Petterson Lighterage & Towing Corp. v. New York Central R. Co.* (C.C.A.2d, 1942) 126 F.(2d) 992; *Brown Paper Mill Co., Inc. v. Irwin* (C.C.A.8th, 1943) 134 F.(2d) 337; *Allen Bradley Co. v. Local Union No. 3, I.B.E.W.* (C.C.A.2d, 1944) 145 F.(2d) 215, rev'd on other grounds (1945) 325 U.S. 797; *Young v. Murphy* (N.D.Ohio 1946) 9 Fed.Rules Serv. 52a.11, Case 2.

The last sentence of Rule 52(a) as amended will remove any doubt that findings and conclusions are unnecessary upon decision of a motion, particularly one under Rule 12 or Rule 56, except as provided in amended Rule 41(b). As so holding, see *Thomas v. Peyser* (App.D.C. 1941) 118 F.(2d) 369; *Schad v. Twentieth Century-Fox Corp.* (C.C.A.3d, 1943) 136 F.(2d) 991; *Prudential Ins. Co. of America v. Goldstein* (E.D.N.Y. 1942) 43 F.Supp. 767; *Somers Coal Co. v. United States* (N.D.Ohio 1942) 6 Fed.Rules Serv. 52a.1, Case 1; *Pen-Ken Oil & Gas Corp. v. Warfield Natural Gas Co.* (E.D.Ky. 1942) 5 Fed.Rules Serv. 52a.1, Case 3; also Commentary, *Necessity of Findings of Fact* (1941) 4 Fed.Rules Serv. 936.

NOTES OF ADVISORY COMMITTEE ON RULES—1963 AMENDMENT

This amendment conforms to the amendment of Rule 58. See the Advisory Committee's Note to Rule 58, as amended.

NOTES OF ADVISORY COMMITTEE ON RULES—1983 AMENDMENT

Rule 52(a) has been amended to revise its penultimate sentence to provide explicitly that the district judge

may make the findings of fact and conclusions of law required in nonjury cases orally. Nothing in the prior text of the rule forbids this practice, which is widely utilized by district judges. See Christensen, *A Modest Proposal for Immeasurable Improvement*, 64 A.B.A.J. 693 (1978). The objective is to lighten the burden on the trial court in preparing findings in nonjury cases. In addition, the amendment should reduce the number of published district court opinions that embrace written findings.

NOTES OF ADVISORY COMMITTEE ON RULES—1985 AMENDMENT

Rule 52(a) has been amended (1) to avoid continued confusion and conflicts among the circuits as to the standard of appellate review of findings of fact by the court, (2) to eliminate the disparity between the standard of review as literally stated in Rule 52(a) and the practice of some courts of appeals, and (3) to promote nationwide uniformity. See Note, *Rule 52(a): Appellate Review of Findings of Fact Based on Documentary or Undisputed Evidence*, 49 Va. L. Rev. 506, 536 (1963).

Some courts of appeal have stated that when a trial court's findings do not rest on demeanor evidence and evaluation of a witness' credibility, there is no reason to defer to the trial court's findings and the appellate court more readily can find them to be clearly erroneous. See, e.g., *Marcum v. United States*, 621 F.2d 142, 144-45 (5th Cir. 1980). Others go further, holding that appellate review may be had without application of the "clearly erroneous" test since the appellate court is in as good a position as the trial court to review a purely documentary record. See, e.g., *Atari, Inc. v. North American Philips Consumer Electronics Corp.*, 672 F.2d 607, 614 (7th Cir.), cert. denied, 459 U.S. 880 (1982); *Lytle v. United States*, 635 F.2d 763, 765 n. 1 (6th Cir. 1981); *Swanson v. Baker Indus., Inc.*, 615 F.2d 479, 483 (8th Cir. 1980); *Taylor v. Lombard*, 606 F.2d 371, 372 (2d Cir. 1979), cert. denied, 445 U.S. 946 (1980); *Jack Kahn Music Co. v. Baldwin Piano & Organ Co.*, 604 F.2d 755, 758 (2d Cir. 1979); *John R. Thompson Co. v. United States*, 477 F.2d 164, 167 (7th Cir. 1973).

A third group has adopted the view that the "clearly erroneous" rule applies in all nonjury cases even when findings are based solely on documentary evidence or on inferences from undisputed facts. See, e.g., *Maxwell v. Sumner*, 673 F.2d 1031, 1036 (9th Cir.), cert. denied, 459 U.S. 976 (1982); *United States v. Texas Education Agency*, 647 F.2d 504, 506-07 (5th Cir. 1981), cert. denied, 454 U.S. 1143 (1982); *Constructora Maza, Inc. v. Banco de Ponce*, 616 F.2d 573, 576 (1st Cir. 1980); *In re Sierra Trading Corp.*, 482 F.2d 333, 337 (10th Cir. 1973); *Case v. Morrisette*, 475 F.2d 1300, 1306-07 (D.C. Cir. 1973).

The commentators also disagree as to the proper interpretation of the Rule. Compare Wright, *The Doubtful Omniscience of Appellate Courts*, 41 Minn. L. Rev. 751, 769-70 (1957) (language and intent of Rule support view that "clearly erroneous" test should apply to all forms of evidence), and 9 C. Wright & A. Miller, *Federal Practice and Procedure: Civil §2587*, at 740 (1971) (language of the Rule is clear), with 5A J. Moore, *Federal Practice* ¶52.04, 2687-88 (2d ed. 1982) (Rule as written supports broader review of findings based on non-demeanor testimony).

The Supreme Court has not clearly resolved the issue. See, *Bose Corp. v. Consumers Union of United States, Inc.*, 466 U.S. 485, 104 S. Ct. 1949, 1958 (1984); *Pullman Standard v. Swint*, 456 U.S. 273, 293 (1982); *United States v. General Motors Corp.*, 384 U.S. 127, 141 n. 16 (1966); *United States v. United States Gypsum Co.*, 333 U.S. 364, 394-96 (1948).

The principal argument advanced in favor of a more searching appellate review of findings by the district court based solely on documentary evidence is that the rationale of Rule 52(a) does not apply when the findings do not rest on the trial court's assessment of credibility of the witnesses but on an evaluation of documentary proof and the drawing of inferences from it, thus eliminating the need for any special deference to the trial court's findings. These considerations are out-

weighed by the public interest in the stability and judicial economy that would be promoted by recognizing that the trial court, not the appellate tribunal, should be the finder of the facts. To permit courts of appeals to share more actively in the fact-finding function would tend to undermine the legitimacy of the district courts in the eyes of litigants, multiply appeals by encouraging appellate retrial of some factual issues, and needlessly reallocate judicial authority.

NOTES OF ADVISORY COMMITTEE ON RULES—1991
AMENDMENT

Subdivision (c) is added. It parallels the revised Rule 50(a), but is applicable to non-jury trials. It authorizes the court to enter judgment at any time that it can appropriately make a dispositive finding of fact on the evidence.

The new subdivision replaces part of Rule 41(b), which formerly authorized a dismissal at the close of the plaintiff's case if the plaintiff had failed to carry an essential burden of proof. Accordingly, the reference to Rule 41 formerly made in subdivision (a) of this rule is deleted.

As under the former Rule 41(b), the court retains discretion to enter no judgment prior to the close of the evidence.

Judgment entered under this rule differs from a summary judgment under Rule 56 in the nature of the evaluation made by the court. A judgment on partial findings is made after the court has heard all the evidence bearing on the crucial issue of fact, and the finding is reversible only if the appellate court finds it to be "clearly erroneous." A summary judgment, in contrast, is made on the basis of facts established on account of the absence of contrary evidence or presumptions; such establishments of fact are rulings on questions of law as provided in Rule 56(a) and are not shielded by the "clear error" standard of review.

NOTES OF ADVISORY COMMITTEE ON RULES—1993
AMENDMENT

This technical amendment corrects an ambiguity in the text of the 1991 revision of the rule, similar to the revision being made to Rule 50. This amendment makes clear that judgments as a matter of law in nonjury trials may be entered against both plaintiffs and defendants and with respect to issues or defenses that may not be wholly dispositive of a claim or defense.

NOTES OF ADVISORY COMMITTEE ON RULES—1995
AMENDMENT

The only change, other than stylistic, intended by this revision is to require that any motion to amend or add findings after a nonjury trial must be filed no later than 10 days after entry of the judgment. Previously, there was an inconsistency in the wording of Rules 50, 52, and 59 with respect to whether certain post-judgment motions had to be filed, or merely served, during that period. This inconsistency caused special problems when motions for a new trial were joined with other post-judgment motions. These motions affect the finality of the judgment, a matter often of importance to third persons as well as the parties and the court. The Committee believes that each of these rules should be revised to require filing before end of the 10-day period. Filing is an event that can be determined with certainty from court records. The phrase "no later than" is used—rather than "within"—to include post-judgment motions that sometimes are filed before actual entry of the judgment by the clerk. It should be noted that under Rule 6(a) Saturdays, Sundays, and legal holidays are excluded in measuring the 10-day period, and that under Rule 5 the motions when filed are to contain a certificate of service on other parties.

Rule 53. Masters

(a) APPOINTMENT AND COMPENSATION. The court in which any action is pending may ap-

point a special master therein. As used in these rules, the word "master" includes a referee, an auditor, an examiner, and an assessor. The compensation to be allowed to a master shall be fixed by the court, and shall be charged upon such of the parties or paid out of any fund or subject matter of the action, which is in the custody and control of the court as the court may direct; provided that this provision for compensation shall not apply when a United States magistrate judge is designated to serve as a master. The master shall not retain the master's report as security for the master's compensation; but when the party ordered to pay the compensation allowed by the court does not pay it after notice and within the time prescribed by the court, the master is entitled to a writ of execution against the delinquent party.

(b) REFERENCE. A reference to a master shall be the exception and not the rule. In actions to be tried by a jury, a reference shall be made only when the issues are complicated; in actions to be tried without a jury, save in matters of account and of difficult computation of damages, a reference shall be made only upon a showing that some exceptional condition requires it. Upon the consent of the parties, a magistrate judge may be designated to serve as a special master without regard to the provisions of this subdivision.

(c) POWERS. The order of reference to the master may specify or limit the master's powers and may direct the master to report only upon particular issues or to do or perform particular acts or to receive and report evidence only and may fix the time and place for beginning and closing the hearings and for the filing of the master's report. Subject to the specifications and limitations stated in the order, the master has and shall exercise the power to regulate all proceedings in every hearing before the master and to do all acts and take all measures necessary or proper for the efficient performance of the master's duties under the order. The master may require the production before the master of evidence upon all matters embraced in the reference, including the production of all books, papers, vouchers, documents, and writings applicable thereto. The master may rule upon the admissibility of evidence unless otherwise directed by the order of reference and has the authority to put witnesses on oath and may examine them and may call the parties to the action and examine them upon oath. When a party so requests, the master shall make a record of the evidence offered and excluded in the same manner and subject to the same limitations as provided in the Federal Rules of Evidence for a court sitting without a jury.

(d) PROCEEDINGS.

(1) *Meetings*. When a reference is made, the clerk shall forthwith furnish the master with a copy of the order of reference. Upon receipt thereof unless the order of reference otherwise provides, the master shall forthwith set a time and place for the first meeting of the parties or their attorneys to be held within 20 days after the date of the order of reference and shall notify the parties or their attorneys. It is the duty of the master to proceed with all reasonable diligence. Either party, on notice