



Producing Opinions & Orders

Chancellor John C. Rambo, 1st Judicial District

When written findings of fact and conclusions of law are required...

- ▶ **Rule 52.01.** Findings Required
- ▶ In all actions tried upon the facts without a jury, the court shall find the facts specially and shall state separately its conclusions of law and direct the entry of the appropriate judgment. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. 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 Rules 41.02 and 65.04(6).

When written findings of fact and conclusions of law are required...

- ▶ **Rule 56.04 – Summary Judgment.**
- ▶ “The trial court shall state the legal grounds upon which the court denies or grants the motions, which shall be included in the order reflecting the court’s ruling.”

When written findings of fact and conclusions of law are required...

- ▶ **Rule 65.04(6)- Temporary Injunction**
- ▶ “In granting, denying or modifying a temporary injunction, the court shall set forth findings of fact and conclusions of law which constitute the grounds of its action as required by Rule 52.01.”

When written findings of fact and conclusions of law are required...

- ▶ **Rule 41.02 – Involuntary Dismissal**
- ▶ “If the court grants the motion for involuntary dismissal, the court shall find the facts specially and shall state separately its conclusions of law and direct the entry of the appropriate judgment.”

When written findings of fact and conclusions of law are required...

- ▶ A party's failure to file a transcript or statement of the evidence "does not vitiate the trial court's failure to make specific findings of fact and conclusions of law." "[T]he trial court is now required to make such findings regardless of a request from either party. *Hardin v. Hardin*, No. W2012-00273-COA-R3CV, 2012 WL 6727533, at *5 (Tenn. Ct. App. Dec. 27, 2012).

Previous court pleadings may inform your findings at trial

- ▶ “Mother testified she will follow the parenting plan, yet this court found her in civil contempt for violating the temporary parenting plan.”
- ▶ “Father testified he will encourage a strong mother-child relationship, yet his proposed parenting plan requested she receive zero parenting days.”

Written findings are required in a **Termination of Parental Rights** case

- ▶ Tenn. Code Ann. § 36-1-113(k)-
- ▶ The court shall enter an order that makes specific findings of fact and conclusions of law within thirty (30) days of the conclusion of the hearing.
- ▶ Courts speak through their written orders, rather than oral rulings, see *City of Oak Ridge v. Levitt*, 493 S.W.3d 492, 503 (Tenn. Ct. App. 2015)
- ▶ An appellate review of a parental termination case is based on the “trial court's final written order, not its oral statements to the parties” *In re B.L.R.*, No. W2004-02636-COA-R3-PT, 2005 WL 1842502, at *11 (Tenn. Ct. App. Aug. 4, 2005)

TPR-cont.

- ▶ “Tenn. Code Ann. § 36–1–113(k) explicitly requires trial courts to ‘enter an order which makes specific findings of fact and conclusions of law’ in termination cases.” *In re Adoption of Muir*, 2003 WL 22794524, at *3. Each “parental termination order must set forth the findings of fact that underlie the conclusions of law.” *In re Adoption of T.L.H.*, 2009 WL 152475, at *5 (citing *In re K.N.R.*, No. M2003–01301–COA–R3–PT, 2003 WL 22999427, at *4 (Tenn. Ct. App. M.S., filed Dec. 23, 2003)).

TPR-cont.


- ▶ “Because of Tenn. Code Ann. § 36–1–113(k), trial courts cannot follow the customary practice of making oral findings from the bench and later adopting them by reference in their final order.” *In re Adoption of Muir*, 2003 WL 22794524, at *3. Instead, “trial courts must prepare and file written findings of fact and conclusions law with regard to every disposition of a petition to terminate parental rights, whether [such findings] have been requested or not.” *Id.* This “applies with equal force to the best interest component.” *In re B.L.R.*, No. W2004–02636–COA–R3–PT, 2005 WL 1842502, at *15 (Tenn. Ct. App. W.S., filed Aug. 4, 2005) (citing *White v. Moody*, 171 S.W.3d 187, 192 (Tenn. Ct. App. 2004)); accord *In re Adoption of T.L.H.*, 2009 WL 152475, at *5.

TPR-cont.

- ▶ “Although the court *need not recite the statutory language*, there must be some indication that the child's best interest is at the heart of the court's reasoning. *Burden v. Burden*, 250 S.W.3d 899, 909 (Tenn. Ct. App. 2007).

What happens if findings of fact and conclusions of law are not made?

- ▶ “[W]hen the trial court fails to make sufficient findings of fact and conclusions of law, the appropriate remedy is to “vacate the trial court's judgment and remand the cause to the trial court for written findings of fact and conclusions of law,” *Lake v. Haynes*, No. W2010–00294–COA–R3–CV, 2011 WL 2361563, at *1 (Tenn.Ct.App. June 9, 2011),

- 
- ▶ *In re K. L. G.* 2016 WL 1203800 (Tenn. Ct. App. March 28, 2016). “In this case, the trial court made no written findings of fact in its final order. Instead, the final order attached a transcript of the court's oral findings given from the bench at the close of the trial. The written order then listed the court's conclusions of law.” *In re K.J.G.*, No. E201500087COAR3PT, 2016 WL 1203800, at *4 (Tenn. Ct. App. Mar. 28, 2016)
 - ▶ This case was vacated and remanded to include written findings of fact and conclusions of law.

There is a presumption that the judge's findings are correct

- ▶ On appeal, there is a presumption that the trial judge's factual findings are correct. Tenn. R. App. P. 13(d). The appellate courts must honor this presumption unless they find that the evidence preponderates against those findings. *Hass v. Knighton*, 676 S.W.2d 554, 555 (Tenn.1984).
- ▶ When credibility and weight to be given testimony are involved, considerable deference is given to the trial court when the trial judge had the opportunity to observe the witness' demeanor and to hear in-court testimony. *Madden v. Holland Group of Tennessee Inc.*, 277 S.W.3d 896, 900 (Tenn. 2009).

Tennessee Pattern Jury Instructions.

— CIVIL 2.20 Credibility of Witness

- ▶ You are not required to accept or reject everything a witness says. You are free to believe all, none, or part of any person's testimony.
- ▶ In deciding which testimony you believe, you should rely on your own common sense and everyday experience ...

It may help you to think about the following questions:

1. Was the witness able to see, hear, or be aware of the things about which the witness testified?
2. How well was the witness able to recall and describe those things?
3. How long was the witness watching or listening?
4. Was the witness distracted in any way?
5. Did the witness have a good memory?
6. How did the witness look and act while testifying?
7. Was the witness making an honest effort to tell the truth, or did the witness evade questions?
8. Did the witness have any interest in the outcome of the case?
9. Did the witness have any motive, bias or prejudice that would influence the witness' testimony?
10. How reasonable was the witness' testimony when you consider all of the evidence in the case?

It may help you to think about the following questions:

11. Was the witness' testimony contradicted by what that witness has said or done at another time, by the testimony of other witnesses, or by other evidence?

12. Has there been evidence regarding the witness' intelligence, respectability, or reputation for truthfulness?

13. Has the witness' testimony been influenced by any promises, threats, or suggestions?

14. Did the witness admit that any part of the witness' testimony was not true?

When stating your findings on credibility, here are some options:

- ▶ For these reasons, the testimony of witness was unpersuasive.
- ▶ The court was unable to rely upon the witness's testimony unless it was corroborated by other reliable testimony or evidence.



Let the appellate court know your courtroom observations regarding credibility for example:

- ▶ When asked difficult questions, the witness looked away from the attorney . . .
- ▶ The witness continually glared at Plaintiff . . .

Hints from the bench on termination cases

- ▶ In Termination of Parental Rights cases, have your assistant contact the petitioner's attorney to ensure that a court reporter has been retained to record the proceedings.
- ▶ Before the presentation of proof, ask if any termination grounds are withdrawn. If withdrawn, you are not required to make written findings of fact or conclusions of law for the withdrawn grounds.

Hints from the bench

- ▶ When you reasonably anticipate a detailed bench ruling with findings of fact and conclusions of law consider the use of a mini voice recorder/flash drive that is designed to record lectures. Current Amazon price of \$23.99. Your assistant or the clerk can email these recordings to the attorney preparing the order.

Hints from the bench

- ▶ Anticipate when an interlocutory order needs detailed findings of fact. For example, an attorney files a motion to withdraw from court-appointed representation of a respondent parent in a termination case.

TYPOGRAPHY FOR LAWYERS

ESSENTIAL TOOLS FOR POLISHED & PERSUASIVE DOCUMENTS

BY MATTHEW BUTTERICK

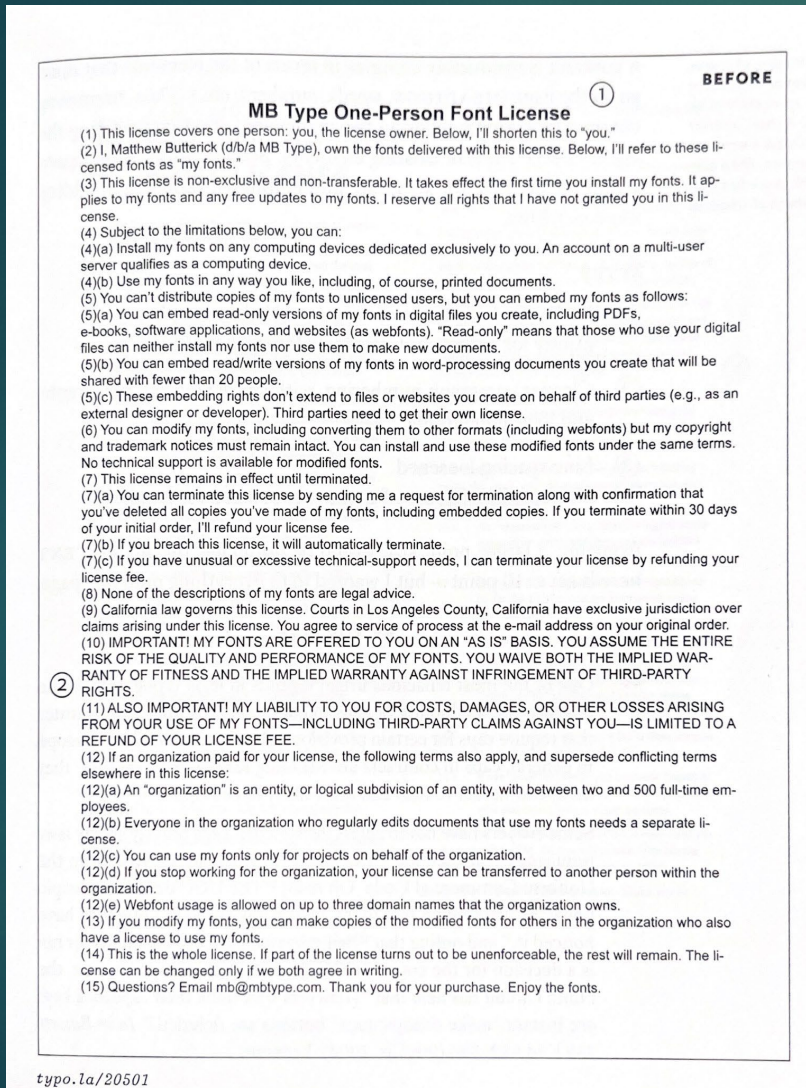
FOREWORD BY BRYAN A. GARNER

2ND EDITION



If you want people
to pay attention to
what you write,
formatting is key!

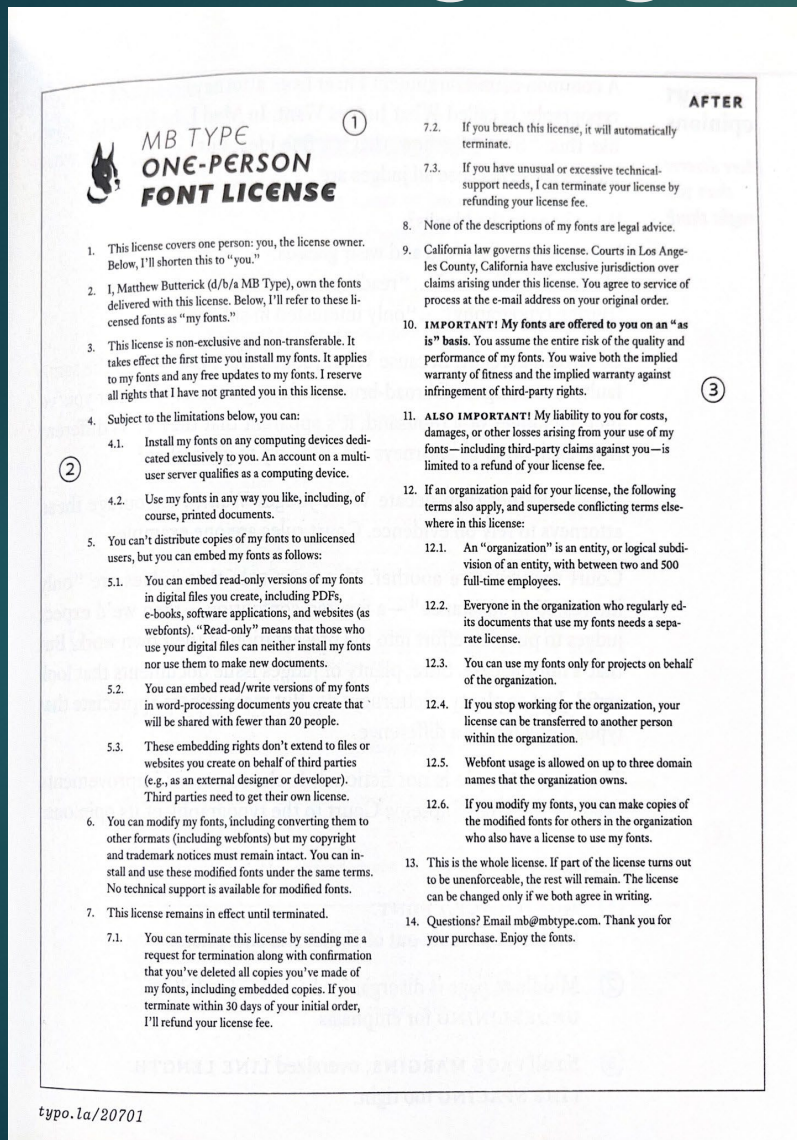
Licensing Agreement - Before



▶ Less likely to be read because:

- Wording covers entire page
- ALL CAPS
- Tight spacing between lines
- Lack of indents for subparts

Licensing Agreement - After



► Readability enhanced by:

- Paragraphs are numbered
- Space between paragraphs
- ALL CAPS removed and replaced with **bold font**

Utah Supreme Court Opinion - Before

2010 UT 8

BEFORE

This opinion is subject to revision before final publication in the Pacific Reporter.

IN THE SUPREME COURT OF THE STATE OF UTAH

---oo0oo---

①

Jerad Egbert and Emily Egbert,
individually and as guardians for
Janessa Egbert,
Plaintiffs and Appellants,

No. 20080993

v.

Nissan Motor Co., Ltd.,
Defendant and Appellee.

F I L E D
February 19, 2010

Certification from the Federal Court

Attorneys: David C. Biggs, Kenneth D. Lougee, Salt Lake City,
for appellants
Tracy H. Fowler, Michael D. Zimmerman, Kamie F. Brown,
Troy L. Booher, Salt Lake City, for appellee

② On Certification from the United States
Federal District Court for the District of Utah
The Honorable Dee V. Benson

DURHAM, Chief Justice:

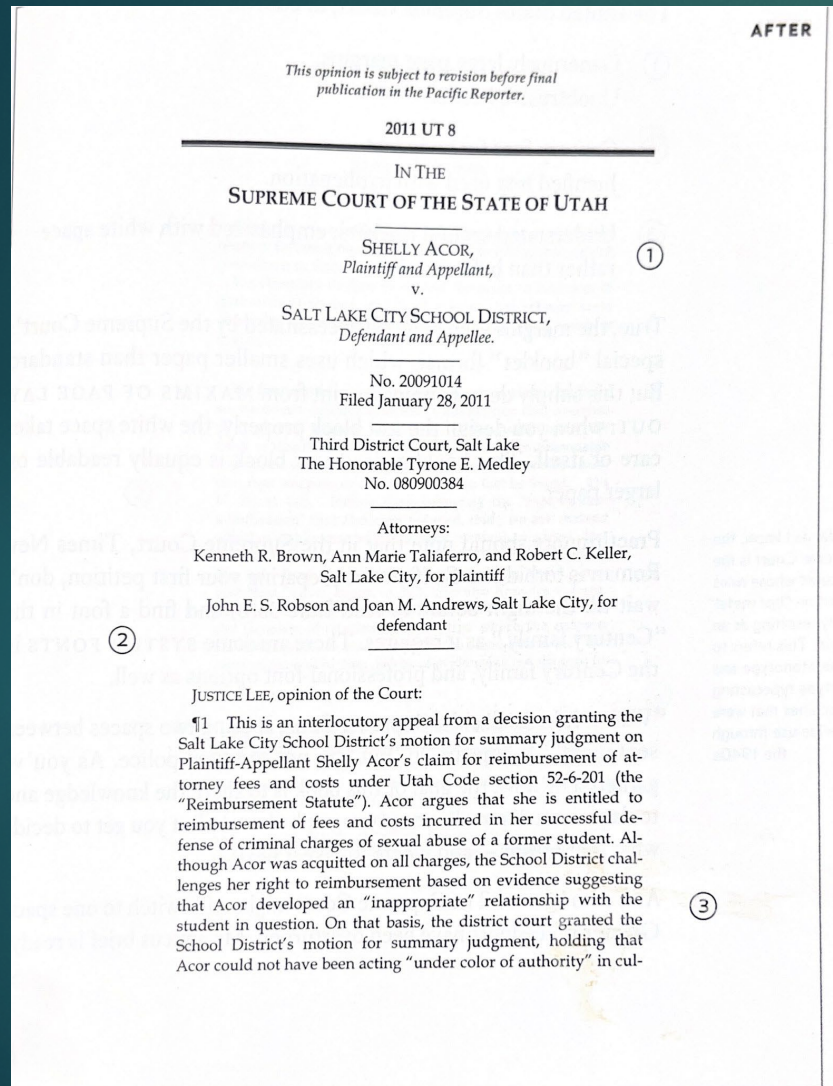
INTRODUCTION

¶1 We have accepted certification of two questions from the United States District Court for the District of Utah: (1) is Utah Code section 78-15-6(3)¹ constitutional; and (2) does Utah recognize section 16(b)-(d) of the Restatement (Third) of Torts: Products Liability? We answer the first question in the affirmative and the second question in the negative. ③

¹ In 2008, the Utah Legislature revised and recodified Title 78. The legislature moved the Utah Product Liability Act from sections 78-15-1 to -7 to sections 78B-6-701 to -707. It renumbered section 78-15-6 as section 78B-6-703. We refer to the previous numbering for clarity in our analysis and because this case was brought before the recodification.

typo.la/wh

Utah Supreme Court Opinion - After



- ▶ Notice emphasis on the parties' names
- ▶ White space – 1.5" top, bottom and side margins
- ▶ Single space instead of double spaces at the end of sentences

Pleading Sample - Before

BEFORE

1 GEORGE CRUIKSHANK
United States Attorney
2 LAURENCE STERNE ①
Assistant United States Attorney
3 312 North Spring Street
Los Angeles, California 90012
4 Telephone: (213) 555-3547
Facsimile: (213) 555-3713
5 E-mail: laurence.sterne@usdoj.gov

6 Attorneys for Plaintiff
United States of America

8 UNITED STATES DISTRICT COURT
9 FOR THE CENTRAL DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,) Case No. _____
12 Plaintiff;) GOVERNMENT'S NOTICE OF REQUEST
13 v.) FOR DETENTION
14 TRISTRAM SHANDY,) ②
15 Defendant.)
16 -----

19 Plaintiff, United States of America, by and through its
20 counsel of record, hereby requests detention of defendant and gives
21 notice of the following material factors:

22 1. Temporary 10-day Detention Requested (§ 3142(d)) on the
23 following grounds:

24 ③ a. present offense committed while defendant was on
25 release pending (felony trial), (sentencing),
26 (appeal), or on (probation) (parole).
27
28

typo.la/17301

Pleading Sample - After

AFTER

1 George Cruikshank, United States Attorney
2 Laurence Sterne, Assistant United States Attorney
3 312 North Spring Street
4 Los Angeles, CA 90012
5 (213) 555-3547
6 (213) 555-3713 fax
7 laurence.sterne@usdoj.gov

8 Attorneys for Plaintiff
9 United States of America

10 UNITED STATES DISTRICT COURT
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 United States of America, 13 Plaintiff; 14 v. 15 Tristram Shandy, 16 Defendant.	17 Case No. _____ 18 Government's Notice of 19 Request for Detention
--	--

20 Plaintiff, United States of America, by and through its counsel of record, hereby
21 requests detention of defendant and gives notice of the following material factors:

22 1. **Temporary 10-day detention requested (§ 3142(d))**
23 **on the following grounds:**

24 a. present offense committed while defendant was on release
25 pending (felony trial), (sentencing), (appeal), or on
26 (probation) (parole).

27
28

- ▶ Again, the name of the parties' is easily readable
- ▶ Use of more modern font
- ▶ Notice the wording is no longer stretched and three lines are replaced with two lines of text
- ▶ Underline text is now **bold** text
- ▶ Title of motion is **bold** and no longer underlined

Make Use of Apps and Programs

- ▶ Consider online programs to improve your writing such as BriefCatch.com (7-day free trial, \$299 per year). BriefCatch is a macro that works with Microsoft Word that works similar to Spellcheck. It assists in proofing and editing legal documents.


Simplify Parenthetical Usage


▶ Johnny L. Litigious
(herein, “Plaintiff”) or
(hereinafter,
“Plaintiff”)

▶ Johnny L. Litigious
 (“Plaintiff”)

Less is More- Use Concise Statements

- ▶ Instead of “critically important” – use “vital” or “crucial”
- ▶ Instead of “cited to” – use “cited”
- ▶ Instead of “subsequent to the parties signing” – use “after signing” or “after the parties sign”

- 
- ▶ “dispute regarding” replace with “dispute over” or “dispute about”
 - ▶ Instead of: “Thereafter”
 - ▶ Substitute “Later” or “Later on”

- 
- ▶ “Tennessee case law indicates that Mr. Jones did have an interest”
 - ▶ “Tennessee law confirms that Mr. Jones did have an interest”
 - ▶ “In the case of *Belote v. White*”
 - ▶ In *Belote v. White*”

Favor strong verbs


- ▶ Instead of: “The work was not in compliance with the terms of the contract”
- ▶ Use: “the work violated the contract’s terms”

Other suggestions

- ▶ When possible, cut “the fact that” and replace with “insisted that” “stressed that” or “emphasized that”
- ▶ For example, instead of “the witness made much of the fact that”
 - ▶ “The witness insisted that...”
- ▶ The marriage became strained over an extended period of time.
 - ▶ The marriage deteriorated over a long time.

- ▶ Instead of “notwithstanding that the court”
- ▶ Use “Although the court” or “even though the court”

- ▶ Instead of “in light of plaintiff’s position” or “considering plaintiff’s position”
- ▶ Use “given plaintiff’s position”

- 
- ▶ “failure within a reasonable period of time to distribute”
 - ▶ “failed to timely distribute”
 - ▶ The case of *Rose v. Rose*, provides a detailed analysis of the term seisin.
 - ▶ In *Rose v. Rose*, the Supreme Court defined the term seisin.
 - ▶ “The Court further explained that”
 - ▶ “The Court added that”

Avoid repetitive information

- ▶ Instead of listing every date such as “She went to her mother’s on September 12, 2022
- ▶ maybe use:
 - ▶ “a few days later”
 - ▶ “Within ”
 - ▶ “the next month”

Final judgments

- ▶ “This order adjudicates all issues in this matter and is a final judgment. All motions for claims for relief not addressed in this, or any prior orders of the court, are hereby denied.”

Contact information

- ▶ Chancellor John Rambo
- ▶ chancellor.john.rambo@tncourts.gov
- ▶ 423-788-1436