



Required Findings for Trial Judges

Attorney Fees * Discovery Proportionality * Expert Testimony

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What this program does

- Shows required findings
- Shows how to avoid reversal
- Provides usable framework

Why cases get reversed

- ✘ Missing findings
- ✘ No reasoning
- ✘ No record

**If the appellate court
cannot see your reasoning,
it cannot affirm your ruling**

Every ruling should show

- ✓ Authority
- ✓ Standard
- ✓ Evidence
- ✓ Findings
- ✓ Conclusion

Appellate test

- What did I decide?
- Why did I decide it?
- What supports it?



Attorney Fees

**You must
show your work**

The American Rule

- Each party pays its own fees
- Fees allowed only if authorized
- Authorization by statute or contract
- Court must identify basis

Judicial Script:

- Court begins with American Rule
- Each party bears its own fees
- Fees only if authorized

Authority

- Contract
- Statute

Entitlement

- Prevailing party
- Basis for fees

Judicial Script:

- Court finds authority under ____
- Court finds [Party] is prevailing party
- Fee award permitted

Lodestar

- Reasonable hours
- Reasonable rate
- Calculate total

Judicial Script:

- Hours reasonably expended = ____
- Reasonable hourly rate = ____
- Lodestar = ____

Burk adjustment

- Time and labor required
- Novelty and difficulty
- Skill required
- Preclusion of employment
- Customary fee
- Fixed or contingent fee
- Time limitations
- Amount involved and result
- Experience, reputation, ability
- Undesirability
- Relationship with client
- Awards in similar cases

Fleig v. Landmark

- Oklahoma Supreme Court (2024)
- Fee award reversed
- Court failed to show its work



Fleig requires

- ✓ Findings on hours
- ✓ Findings on rate
- ✓ Lodestar calculation
- ✓ Explanation of reasoning
- ✓ Record for review

**Fleig requires you to
show your work**

Required findings

- ✓ Hours
- ✓ Rate
- ✓ Lodestar
- ✓ Adjustment
- ✓ Reasoning

“The Court finds ...”

- Fees authorized under ____
- Prevailing party ____
- Hours ____
- Rate ____
- Lodestar ____
- Adjustment ____
- Final award ____

Judicial Script:

- Court finds authority and entitlement
- Court finds hours, rate, and lodestar
- Court applies Burk factors
- Court awards ____

Reversible error

- “I award \$X”
- No lodestar
- No findings

**If the appellate court
cannot follow your math,
it will reverse**

Discovery Proportionality

**No claim-level relevance,
no discovery**

Step 1

- Identify request

Step 2

- Identify objection

Step 3

- Identify claim

Step 4

- Tie relevance to claim

Step 5

- Evidence of burden

Step 6

- Define scope

Required findings

- ✓ Relevance
- ✓ Burden
- ✓ Scope

“The Court finds ...”

- ✓ Request seeks _____
- ✓ Objection _____
- ✓ Relevant because _____
- ✓ Scope limited to _____

Reversible error

- Compel without explanation
- Assume relevance
- No findings

**If they cannot explain it,
you cannot order it**

Expert Testimony

**You are the gatekeeper,
not the referee**

Step 1

- Identify opinions

Step 2

- Qualification

Step 3

- Method

Step 4

- Application

Step 5

- Admit or exclude

**Method is not enough.
Application is everything.**

Required findings

- ✓ Qualification
- ✓ Method
- ✓ Application

“The Court finds...” (Admit)

- Qualified
- Reliable method
- Reliable application

“The Court finds...” (Exclude)

- Method or application unreliable

Reversible error

- Goes to weight
- No ruling
- No findings

**If you do not rule,
the appellate court will**

Judicial model

- Authority
- Standard
- Evidence
- Findings
- Conclusion

**If it is not on the record,
it does not exist**

Questions?