

**Appealing Your Family Law Case: A Primer for the Family Law
Practitioner**

Presented By:

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**APPEALING THE FAMILY LAW CASE:
A PRIMER FOR THE FAMILY LAW PRACTITIONER**

I. INTRODUCTION

This paper presents an overview of appeals in family law cases. It is not intended to be an in-depth examination of appellate practice, but instead presents a synopsis of many of the issues typical to family law appeals.

We begin with some limited considerations affecting the decision to appeal. In light of the particular importance of findings of fact and conclusions of law in the family law context, we outline the process for obtaining them. Next, we address the appellate standards of review most often applicable in family law cases before turning to error preservation. We then provide an overview of effective appellate briefing and conclude with a few tips for effective oral advocacy in an appellate court. Where appropriate, practice tips are set off and marked with this symbol:

II. EVALUATING THE CASE

The time to consider potential appellate complaints is before the trial begins. If you delay consideration of some matters, you may find that you have missed an important opportunity. For example, if the suit involves a pre-marital or post-marital agreement, there may be choice-of-law provisions that require you to research the law of another jurisdiction and bring the governing law to the court's attention. Failure to amend pleadings also may prevent you from obtaining all of the relief allowed to your client. *See Binder v. Joe*, 193 S.W.3d 29, 33 (Tex. App.—Houston [1st Dist.] 2006, no pet.) (“Although detailed pleadings are not required in suits affecting the parent-child relationship,” a pleading can be too general to place the opposing party on notice that certain relief will be sought). For the purposes of this paper, however, we will assume that you addressed any such considerations in a timely manner,¹ and focus our attention on events occurring at and after the time that judgment is rendered.

Emotions run high in family law cases, and you may need to discuss with a client the risks and benefits

¹ For an excellent discussion of such matters, the reader is referred to Sallee S. Smyth, *C.Y.A. for the C.O.A.: Tips for Avoiding Reversal*, Family Law on the Frontlines, University of Texas School of Law (2006).

of an appeal under very difficult circumstances. It is important to remember at this critical stage that:

[T]he decision to appeal should not be driven by comparative economies of wishful thinking; rather it should be based on professional judgment made after careful review of the record for preserved error and after applying applicable standards of appellate review. It is not a mechanical exercise, but requires the dutiful application of lawyering skills.

See Campos v. Inv. Mgmt. Props., Inc., 917 S.W.2d 351, 357 (Tex. App.—San Antonio 1996, writ denied) (Green, J., concurring). Although your client may want immediate reassurance that you will promptly seek reversal, you must candidly discuss with your client the likelihood of success on appeal.

To make this determination, you will want to obtain findings of fact and conclusions of law if the case was tried without a jury; these will help you narrow the issues for review. But before you can legitimately advise your client of the potential merits of an appeal, you must be able to (a) identify an error by the trial court, (b) that has been adequately preserved, and (c) that has harmed your client. Finally, to prevail on appeal, you must be able to write a persuasive brief—and ideally, present a persuasive oral argument—on these factors.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW: GET THE REASONS ON THE RECORD!

After a jury trial, the appellate court can identify the findings of fact by examining the jury charge and verdict. But after a bench trial, it may be difficult to identify the facts or legal theories on which the trial court based its judgment. Findings of fact and conclusions of law fill this gap. If your family law case was tried to the bench, then obtaining findings of fact and conclusions of law will be a vital step in building the appellate record.

A. Purpose of Findings and Conclusions

A request for findings of fact and conclusions of law is used to obtain an explanation for the judgment. *Pursley v. Ussery*, 982 S.W.2d 596, 599 n.2. (Tex. App.—San Antonio 1998, pet. denied). Consequently, a trial court need not make findings of fact on undisputed matters. *SMI/USA, Inc. v. Profile Techs.*,