

Proposal 02-09

(P.R. 0106)

PROPOSAL 1 - Offered by the Supreme Court Rules Committee

RULE 305. STAY OF JUDGMENTS PENDING APPEAL

(a) Stay of Enforcement of Money Judgments.

The enforcement of a judgment for money only, or any portion of a judgment which is for money, is shall be stayed only if a timely notice of appeal is filed and an appeal bond or other form of security, including, but not limited to, letters of credit, escrow agreements, and certificates of deposit, is presented to, approved by and filed with the court within the time for filing the notice of appeal or within any extension of time granted under paragraph (c) of this rule. Notice of presentment of the bond or other form of security shall be given by the judgment debtor to all parties. The bond or other form of security ordinarily shall be in an amount sufficient to cover the amount of the judgment and costs plus interest reasonably anticipated to accrue during the pendency of the appeal. If the court, after weighing all the relevant circumstances, including the amount of the judgment, anticipated interest and costs, the availability and cost of a bond or other form of security, the assets of the judgment debtor and of the judgment debtor's insurers and indemnitors, if any, and any other factors the court may deem relevant, determines that a bond or other form of security in the amount of the judgment plus anticipated interest and costs is not reasonably available to the judgment debtor, the court may approve a bond or other form of security in a lesser amount. In the event that the court approves a bond or other form of security in an amount less than the amount of the judgment plus anticipated interest and costs, the court may impose additional conditions on the judgment debtor as may be required to prevent dissipation or diversion of the judgment debtor's assets.

(b) Other Stays of Enforcements of Judgments and Appealable Orders.

On notice and motion, and an opportunity for opposing parties to be heard, the court may stay the enforcement of any judgment, or the enforcement, force and effect of interlocutory orders or any other judicial or administrative order. The stay shall be conditioned upon such terms as are just. A bond or other form of security may be required in any case, and shall be required in money judgments or to protect an appellee's interest in property.

(c) Extensions of Time.

On motion made within the time for filing the notice of appeal or within any extension granted pursuant to this paragraph, the time for the filing and approval of the bond or other form of security may be extended by the trial court or by the reviewing court or a judge thereof, but the extensions of time granted by the trial court may not aggregate more than 45 days unless the parties stipulate otherwise. A motion in the reviewing court for any extension of time for the filing and approval of the bond or other form of security in the trial court must be supported by affidavit and accompanied by a supporting record (Rule 328), if the record on appeal has not been filed.

(d) Stays by the Reviewing Court.

Application for a stay ordinarily must be made in the first instance to the trial court. A motion for a stay may be made to the reviewing court, or to a judge thereof, but such a motion must show the application to the trial court is not practical, or that the trial court has denied an application or has failed to afford the relief that the applicant has requested, and must be accompanied by suggestions in support of the motion and a supporting record (Rule 328), if the record on appeal has not been filed. If a stay is granted by the reviewing court or a judge thereof,

the clerk shall notify the parties and transmit to the clerk of the trial court or administrative agency a certified copy of the order granting the stay.

(e) When Notice of Appeal Is Amended.

If a notice of appeal is amended to specify parts of the judgment not specified in the original notice of appeal, the stay of the judgment described in the original notice of appeal does not extend to any added part of the judgment, but a stay of the added part may be obtained under the same conditions and by the same procedure set forth above.

(f) Condition of the Bond.

If an appeal is from a judgment for money, the condition of the bond or other form of security shall be for the prosecution of the appeal and the payment of the judgment, interest, and costs in case the judgment is affirmed or the appeal dismissed unless other terms are approved by the court as provided in paragraph (a) above, except that the bond of an executor or administrator shall be conditioned upon payment in due course of administration and that the bond of a guardian for a minor or a person under legal disability shall be conditioned on payment as the guardian has funds therefor. In all other cases, the condition shall be fixed with reference to the character of the judgment.

(g) Changing the Amount, Terms, and Form of Security of the Bond After the Appeal is Docketed.

After the case is docketed in the reviewing court, that court or a judge thereof upon motion may change the amount, terms or form of security of the bond or other form of security, whether fixed by it or by the trial court, and failure to comply with the order of the reviewing court or judge shall terminate the stay.

(h) Appeals by Public Agencies.

If an appeal is prosecuted by a public, municipal, governmental, or quasi-municipal corporation, or by a public officer in that person's official capacity for the benefit of the public, the trial court, or the reviewing court or a judge thereof, may stay the judgment pending appeal without requiring that any bond or other form of security be given.

(i) Insurance Policy as Bond.

The filing of an insurance policy pursuant to section 392.1 of the Illinois Insurance Code (215 ILCS 5/392.1 (West 1992)) shall be considered the filing of a bond for purposes of this rule.

(j) Failure to Obtain Stay; Effect on Interests in Property.

If a stay is not perfected within the time for filing the notice of appeal, or within any extension of time granted under subparagraph (c) of this rule, the reversal or modification of the judgment does not affect the right, title, or interest of any person who is not a party to the action in or to any real or personal property that is acquired after the judgment becomes final and before the judgment is stayed; nor shall the reversal or modification affect any right of any person who is not a party to the action under or by virtue of any certificate of sale issued pursuant to a sale based on the judgment and before the judgment is stayed. This paragraph applies even if the appellant is a minor or a person under legal disability or under duress at the time the judgment becomes final.

(k) Land Trust Bond.

The filing of a bond or other form of security by a beneficiary under a land trust where the land trust is a party shall be considered filing of a bond for purposes of this rule.

Committee Comments to 2003 Amendments

Paragraph (a)

The amendment is designed to preserve the right of appeal. The traditional method of securing a judgment is to require an appeal bond in the amount of the judgment plus anticipated interest and costs. In recent years, changes in the insurance market have made appeal bonds costly in many cases and unavailable in some cases. When an alternative type of security (e.g., letters of credit, escrow agreement, certificate of deposit) offers comparable assurance of payment at lower cost, requiring an appeal bond needlessly increases the cost of appeal.

It is anticipated that the amount of the bond or other form of security will normally be in an amount sufficient to cover the judgment, interest, and costs. In some instances, however, the appeal bond requirement may be so onerous that it creates an artificial barrier to appeal, forcing a party to settle a case or declare bankruptcy. Thus, the amended rule gives the court discretion in a money judgment case to approve a bond or other form of security that covers less than the entire amount of the judgment plus anticipated interest and costs. This does not lessen the judgment debtor's obligation on the judgment, but simply allows the judgment debtor to obtain a stay of execution on the judgment pending appeal. As made clear in the last sentence of the amended rule, appropriate conditions may be imposed to prevent the judgment debtor from dissipating assets that would otherwise be available for payment of the judgment if the appeal is unsuccessful. Thus, depending on the circumstances, a business may be precluded from selling or otherwise disposing of any of its assets outside the ordinary course of its business, or an individual might be prohibited from spending any sums other than are required for ordinary living expenses.

**PROPOSAL 2 - Offered by the Petition Filed with the Supreme Court of Illinois on
May 12, 2003**

RULE 305 STAY OF JUDGMENTS PENDING APPEAL

(a) Stay of Enforcement of Money Judgments.

The enforcement of a judgment for money only, or any portion of a judgment which is for money, ~~is stayed only~~ shall be stayed if a timely notice of appeal is filed and an appeal bond is presented, approved, and filed within the time for filing the notice of appeal or within any extension of time granted under paragraph (c) of this rule. Notice of the presentment of the bond shall be given to the appellee. For any form of monetary relief awarded in a class action or punitive damages awarded in any action, The the bond shall be the lower of (1) the amount of the judgment, interest and costs or (2) ten percent (10%) of the balance sheet net worth of the defendant as determined by applying generally accepted accounting principles to the defendant's financial status as of December 31 of the year prior to the judgment; provided, however, that in no case shall the amount of the required bond exceed one-hundred-million dollars (\$100,000,000). For purposes of this rule, a money judgment shall include any judgment directing payment or expenditure of funds under any legal or equitable theory or theories for compensatory and/or punitive damages and/or other monetary relief of any sort.

(b) Other Stays of Enforcements of Judgments and Appealable Orders.

On notice and motion, and an opportunity for opposing parties to be heard, the court may stay the enforcement of any judgment, or the enforcement, force and effect of interlocutory orders or any other judicial or administrative order. The stay shall be conditioned upon such terms as are just. A bond may be required in any case, and shall be required in money judgments or to protect an appellee's interest in property. In setting the terms of a bond required under this

paragraph, the court shall take into account the interests of both parties. No bond required under this paragraph shall exceed the maximum amount permitted under paragraph (a), and the court shall not take this limitation into account in determining whether to stay enforcement of a judgment under this paragraph.

(c) Extensions of Time.

On motion made within the time for filing the notice of appeal or within any extension granted pursuant to this paragraph, the time for the filing and approval of the bond may be extended by the trial court or by the reviewing court or a judge thereof, but the extensions of time granted by the trial court may not aggregate more than 45 days unless the parties stipulate otherwise. A motion in the reviewing court for any extension of time for the filing and approval of the bond in the trial court must be supported by affidavit and accompanied by a supporting record (Rule 328), if the record on appeal has not been filed.

(d) Stays by the Reviewing Court.

Application for a stay ordinarily must be made in the first instance to the trial court. A motion for a stay may be made to the reviewing court, or to a judge thereof, but such a motion must show that application to the trial court is not practical, or that the trial court has denied an application or has failed to afford the relief that the applicant has requested, and must be accompanied by suggestions in support of the motion and a supporting record (Rule 328), if the record on appeal has not been filed. If a stay is granted by the reviewing court or a judge thereof, the clerk shall notify the parties and transmit to the clerk of the trial court or administrative agency a certified copy of the order granting the stay.

(e) When Notice of Appeal is Amended.

If a notice of appeal is amended to specify parts of the judgment not specified in the original notice of appeal, the stay of the judgment described in the original notice of appeal does not extend to any added part of the judgment, but a stay of the added part may be obtained under the same conditions and by the same procedure set forth above.

(f) Condition of the Bond.

If an appeal is from a judgment for money, the condition of the bond shall be for the prosecution of the appeal and the payment of the judgment, interest, and costs in case the judgment is affirmed or the appeal dismissed, except as provided under paragraphs (a) and (b) above, and except that the bond of an executor or administrator shall be conditioned upon payment in due course of administration and that the bond of a guardian for a minor or a person under legal disability shall be conditioned on payment as the guardian has funds therefor. In all other cases, the condition shall be fixed with reference to the character of the judgment.

(g) Changing the Amount, Terms, and Security of the Bond After the Appeal is Docketed.

After the case is docketed in the reviewing court, that court or a judge thereof upon motion may change the amount, terms or security of the bond, whether fixed by it or by the trial court, and failure to comply with the order of the reviewing court or judge shall terminate the stay. No bond required under this paragraph shall exceed the maximum amount permitted under paragraph (a).

(h) Appeals by Public Agencies.

If an appeal is prosecuted by a public, municipal, governmental, or quasi-municipal corporation, or by a public officer in that person's official capacity for the benefit of the public,

the trial court, or the reviewing court or a judge thereof, may stay the judgment pending appeal without requiring that any bond be given.

(i) Insurance Policy as Bond.

The filing of an insurance policy pursuant to section 392.1 of the Illinois Insurance Code (215 ILCS 5/392.1 (West 1992)) shall be considered the filing of a bond for purposes of this rule.

(j) Failure to Obtain Stay; Effect on Interests in Property.

If a stay is not perfected within the time for filing the notice of appeal, or within any extension of time granted under subparagraph (c) of this rule, the reversal or modification of the judgment does not affect the right, title, or interest of any person who is not a party to the action in or to any real or personal property that is acquired after the judgment becomes final and before the judgment is stayed; nor shall the reversal or modification affect any right of any person who is not a party to the action under or by virtue of any certificate of sale issued pursuant to a sale based on the judgment and before the judgment is stayed. This paragraph applies even if the appellant is a minor or a person under legal disability or under duress at the time the judgment becomes final.

(k) Land Trust Bond.

The filing of a bond by a beneficiary under a land trust where the land trust is a party shall be considered filing of a bond for purposes of this rule.

(l) Dissipation Of Assets.

Upon proof by a preponderance of the evidence that an appellant is intentionally dissipating or diverting assets outside of the ordinary course of its business for the purpose of avoiding payment of the judgment, the court shall enter such orders as are necessary to prevent the dissipation or diversion of assets.

Comments to 2003 Amendments

This rule has been amended to supersede the requirements imposed by the 1993 Amendments that the bond required to stay a money judgment case be sufficient to cover the entire amount of the judgment interest and costs in actions involving punitive damages or in class actions, to clarify that a court has discretion to set a bond in a lower amount in any action, and to provide the trial court with continued jurisdiction to prevent intentional dissipation of assets during the course of the appeal.

Paragraph (a)

Paragraph (a) is amended to provide the size of an appeal bond required under this paragraph to stay a money judgment in a class action awarding any form of monetary relief or in any action awarding punitive damages shall not exceed the lower of the amount of the judgment, interest and costs or ten percent of the defendant's net worth, provided that in no case shall the amount of the bond exceed one-hundred-million dollars. This paragraph is amended to clarify that the term "money judgment" describes equitable as well as legal remedies including such equitable remedies as disgorgement, and encompasses compensatory and/or punitive damages and/or other monetary relief of any sort.

Paragraph (b)

Paragraph (b) is amended to limit the size of an appeal bond required under this paragraph to the maximum amount permitted under paragraph (a). Paragraph (b) is also amended to clarify that this limitation may not be used by the court as a reason to deny a stay under this provision and that the court must consider the interest of the appellant in pursuing an appeal when determining the terms of the required bond.

Paragraph (f)

Paragraph (f) is amended to conform with the amendments to paragraphs (a) and (b).

Paragraph (l)

Paragraph (l) is created to provide continued jurisdiction and authority to the trial court to prevent intentional dissipation of a defendants' assets during appeal when the appeal bond is set in an amount less than the total judgment.