

RULE 9.310. STAY PENDING REVIEW

(a) Application. Except as provided by general law and in subdivision (b) of this rule, a party seeking to stay a final or non-final order pending review shall file a motion in the lower tribunal, which shall have continuing jurisdiction, in its discretion, to grant, modify, or deny such relief. A stay pending review may be conditioned on the posting of a good and sufficient bond, other conditions, or both.

(b) Exceptions.

(1) Money Judgments. If the order is a judgment solely for the payment of money, a party may obtain an automatic stay of execution pending review, without the necessity of a motion or order, by posting a good and sufficient bond equal to the principal amount of the judgment plus twice the statutory rate of interest on judgments on the total amount on which the party has an obligation to pay interest. Multiple parties having common liability may file a single bond satisfying the above criteria.

(2) Reduction or Limitation on Bond Amount. Except in class actions subject to section 768.733, Florida Statutes, the amount of the supersedeas bond in subdivision (b)(1) is subject to modification as set forth in subdivisions (A) and (B) below:

(A) Reduction. A party seeking to stay execution of a judgment pending review may move the lower tribunal to reduce the amount of a supersedeas bond required to obtain such a stay. The lower tribunal, in the interest of justice and for good cause shown, may reduce the supersedeas bond or may set other conditions for the stay with or without a bond. The lower tribunal may not reduce the supersedeas bond if the party seeking a stay has an insurance or indemnification policy applicable to the case.

(B) Limitation. Regardless of the amount of the judgment appealed, the supersedeas bond amount necessary to obtain an automatic stay in any civil action shall not exceed \$50 million for each appellant. The \$50 million amount shall be adjusted annually for inflation as provided by general law.

(3) Protection for Party Opposing Stay. If a party seeking to stay execution of a judgment pending review has posted a supersedeas bond for an amount less than that required for an automatic stay under division (b)(1),

the opposing party may engage in discovery for the limited purpose of determining whether the party seeking the stay has dissipated or diverted assets outside the course of its ordinary business or is in the process of doing so. If the lower tribunal determines that the party seeking a stay has dissipated or diverted assets outside the course of its ordinary business or is in the process of doing so, the lower tribunal may enter orders necessary to protect the opposing party, require the party seeking a stay to post a bond in the amount up to, but not more than, the amount required for an automatic stay under subdivision (b)(1), and impose other appropriate remedies and sanctions.

(24) Public Bodies; Public Officers. The timely filing of a notice shall automatically operate as a stay pending review, except in criminal cases, when the state, any public officer in an official capacity, board, commission, or other public body seeks review; provided that an automatic stay shall exist for 48 hours after the filing of the notice of appeal for public records and public meeting cases. On motion, the lower tribunal or the court may extend a stay, impose any lawful conditions, or vacate the stay.

Committee Notes

1977 Amendment. This rule replaces former rules 5.1 through 5.12. It implements the Administrative Procedure Act, section 120.68(3), Florida Statutes (Supp. 1976).

Subdivision (a) provides for obtaining a stay pending review by filing a motion in the lower tribunal, and clarifies the authority of the lower tribunal to increase or decrease the bond or deal with other conditions of the stay, even though the case is pending before the court. Exceptions are provided in subdivision (b). The rule preserves any statutory right to a stay. The court has plenary power to alter any requirements imposed by the lower tribunal. A party desiring exercise of the court's power may seek review by motion under subdivision (f) of this rule.

Subdivision (b)(1) replaces former rule 5.7. It establishes a fixed formula for determining the amount of the bond if there is a judgment solely for money. This formula shall be automatically accepted by the clerk. If an insurance company is a party to an action with its insured, and the judgment exceeds the insurance company's limits of liability, the rule permits the insurance company to supersede by posting a bond in the amount of its

limits of liability, plus 15 percent. For the insured co-defendant to obtain a stay, bond must be posted for the portion of the judgment entered against the insured co-defendant plus 15 percent. The 15 percent figure was chosen as a reasonable estimate of 2 years' interest and costs, it being very likely that the stay would remain in effect for over 1 year.

Subdivision (b)(2) replaces former rule 5.12. It provides for an automatic stay without bond as soon as a notice invoking jurisdiction is filed by the state or any other public body, other than in criminal cases, which are covered by rule 9.140(c)(3), but the lower tribunal may vacate the stay or require a bond. This rule supersedes *Lewis v. Career Service Commission*, 332 So.2d 371 (Fla. 1st DCA 1976).

Subdivision (c) retains the substance of former rule 5.6, and states the mandatory conditions of the bond.

Subdivision (d) retains the substance of former rule 5.11, with an additional provision for entry of judgment by the court so that if the lower tribunal is an agency, resort to an independent action is unnecessary.

Subdivision (e) is new and is intended to permit a stay for which a single bond premium has been paid to remain effective during all review proceedings. The stay is vacated by issuance of mandate or an order vacating it. There are no automatic stays of mandate under these rules, except for the state or a public body under subdivision (b)(2) of this rule, or if a stay as of right is guaranteed by statute. See, e.g., §120.68(3), Fla. Stat. (Supp. 1976). This rule interacts with rule 9.340, however, so that a party has 15 days between rendition of the court's decision and issuance of mandate (unless issuance of mandate is expedited) to move for a stay of mandate pending review. If such motion is granted, any stay and bond previously in effect continues, except to the extent of any modifications, by operation of this rule. If circumstances arise requiring alteration of the terms of the stay, the party asserting the need for such change should apply by motion for the appropriate order.

Subdivision (f) provides for review of orders regarding stays pending appeal by motion in the court.

Although the normal and preferred procedure is for the parties to seek the stay in the lower court, this rule is not intended to limit the constitutional power of the court to issue stay orders after its jurisdiction has been invoked. It is intended that if review of the decision of a Florida court is sought in the

United States Supreme Court, a party may move for a stay of mandate, but subdivision (e) does not apply in such cases.

1984 Amendment. Because of recent increases in the statutory rate of interest on judgments, subdivision (b)(1) was amended to provide that 2 years' interest on the judgment, rather than 15 percent of the judgment, be posted in addition to the principal amount of the judgment. In addition, the subdivision was amended to cure a deficiency in the prior rule revealed by *Proprietors Insurance Co. v. Valsecchi*, 385 So.2d 749 (Fla. 3d DCA 1980). As under the former rule, if a party has an obligation to pay interest only on the judgment, the bond required for that party shall be equal to the principal amount of the judgment plus 2 years' interest on it. In some cases, however, an insurer may be liable under its policy to pay interest on the entire amount of the judgment against its insured, notwithstanding that the judgment against it may be limited to a lesser amount by its policy limits. See *Highway Casualty Co. v. Johnston*, 104 So.2d 734 (Fla. 1958). In that situation, the amended rule requires the insurance company to supersede the limited judgment against it by posting a bond in the amount of the judgment plus 2 years' interest on the judgment against its insured, so that the bond will more closely approximate the insurer's actual liability to the plaintiff at the end of the duration of the stay. If such a bond is posted by an insurer, the insured may obtain a stay by posting a bond in the amount of the judgment against it in excess of that superseded by the insurer. The extent of coverage and obligation to pay interest may, in certain cases, require an evidentiary determination by the court.

1992 Amendment. Subdivision (c)(1) was amended to eliminate the ability of a party posting a bond to do so through the use of 2 personal sureties. The committee was of the opinion that a meaningful supersedeas could be obtained only through the use of either a surety company or the posting of cash. The committee also felt, however, that it was appropriate to note that the lower tribunal retained continuing jurisdiction over the actual sufficiency of any such bond.