

Proposed rule

Reason for change

RULE 9.31. 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

Adds language so to be consistent with section 45.045, Florida Statutes.

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 subdivision (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.

(2-4) Public Bodies; Public Officers. The timely filing of a notice shall automatically operate as a stay

Renumbered in light of new subdivisions.

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.

(c) Bond.

(1) Defined. A good and sufficient bond is a bond with a principal and a surety company authorized to do business in the State of Florida, or cash deposited in the circuit court clerk's office. The lower tribunal shall have continuing jurisdiction to determine the actual sufficiency of any such bond.

(2) Conditions. The conditions of a bond shall include a condition to pay or comply with the order in full, including costs; interest; fees; and damages for delay, use, detention, and depreciation of property, if the review is dismissed or order affirmed; and may include such other conditions as may be required by the lower tribunal.

(d) Judgment Against a Surety. A surety on a bond conditioning a stay submits to the jurisdiction of the lower tribunal and the court. The liability of the surety on such bond may be enforced by the lower tribunal or the court, after motion and notice, without the necessity of an independent action.

(e) Duration. A stay entered by a lower tribunal shall remain in effect during the pendency of all review proceedings in Florida courts until a mandate issues, or unless otherwise modified or vacated.

(f) Review. Review of orders entered by lower tribunals under this rule shall be by the court on motion.