

Rule 368. Issuance, Stay, and Recall of Mandates from Reviewing Court

(a) Issuance; Stay on Petition for Rehearing. The clerk of the reviewing court shall transmit to the circuit court the mandate of the reviewing court, with notice to the parties, not earlier than 35 days after the entry of judgment unless the court orders otherwise. The timely filing of a petition for rehearing will stay the mandate until disposition of the petition unless otherwise ordered by the court. If the petition is denied, the mandate shall issue not earlier than 35 days after entry of the order denying the petition unless the court upon motion orders the time shortened or enlarged. The filing of a corrected opinion where no petition for rehearing has been filed does not extend the time for transmission of the mandate.

(b) Stay When Review by Supreme Court Is Sought. In cases in which an injunction has been modified or set aside by the Appellate Court, that court's mandate may be stayed only upon order of that court, the Supreme Court or a judge of either court. In all other cases, the mandate is stayed automatically if, before it may issue, a party who is entitled to seek review by the Supreme Court files a petition in the Supreme Court for such review. The stay is effective until the expiration of the time to seek review, and, if review is timely sought, until disposition of the case by the Supreme Court. The Supreme Court, the Appellate Court, or a judge of either court may, upon motion, order otherwise or stay the mandate upon just terms.

(c) Stay or Recall by Order. The Appellate Court, the Supreme Court, or a judge of either court may, upon just terms, stay the issuance of or recall any mandate of the Appellate Court until the time for seeking review by the Supreme Court expires, or if review is timely sought, until it is granted or refused, or if review is granted, until final disposition of the case by the Supreme Court. The stay may apply to any judgment entered or standing affirmed in any court pursuant to the mandate of the Appellate Court. In cases in which review by the Supreme Court of the United States may be sought, the court whose decision is sought to be reviewed or a judge thereof, and in any event the Supreme Court of Illinois or a judge thereof, may stay or recall the mandate, as may be appropriate.

Amended December 17, 1993, effective February 1, 1994; [amended February 10, 2006, effective July 1, 2006](#); [amended Sept. 30, 2020, eff. Oct. 1, 2020](#).

Committee Comments

This rule is principally derived from section 82(4) of the Civil Practice Act and former Supreme Court Rule 45, Rule 10 of the First Appellate District, and Rule 16 of the other appellate districts (earlier Uniform Appellate Court Rule 16). The rule is made the same for the supreme and appellate courts.

Paragraph (a)

Paragraph (a) enlarges the minimum time for issuance of a mandate from 15 to 21 days, but reduces the time after denial of rehearing from 10 to 7 days in the Appellate Court and, in the Supreme Court, from the period until the end of the term, or 15 days if the denial was during vacation, to 7 days. There is no good reason for delay after rehearing is denied. Issuance of the mandate in the Supreme Court is no longer tied in to the close of the term of court. The mandate

is to be issued automatically by the clerk of the reviewing court.

Paragraph (b)

Paragraph (b) removes from the automatic stay provision of the superseded Appellate Court rules (Rule 10 of the First District, Rule 16 of the other districts) cases in which the Appellate Court sets aside or modifies an injunction. The committee believes that in view of the nature and gravity of injunctive relief it is wrong to provide for the automatic continuance of an injunction that presumptively was erroneously issued, in whole or in part, and that such an injunction should be continued in effect only if one of the reviewing courts or a judge thereof determines that it should be.

The provision of the former rules for an automatic stay in other cases (unless the Supreme or Appellate Court or a judge of either otherwise orders) is retained. The affidavit filed to obtain the automatic stay may be that of the party or his attorney, and need not be executed by both as under the former rules.

Paragraph (c)

Paragraph (c) simplifies section 82(4) of the Civil Practice Act to make it clear that the Supreme Court, the Appellate Court, or a judge of either, when appropriate, has discretion to grant a stay upon just terms until final disposition of the case, whether by the Illinois Supreme Court or the Supreme Court of the United States.