

## **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, shall be stayed 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 the presentation 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 a form of security other than an appeal bond is presented, the appellant shall have the burden of demonstrating the adequacy of such other security. 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 the maximum amount reasonably available to the judgment debtor. 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 shall impose additional conditions on the judgment debtor to prevent dissipation or diversion of the judgment debtor's assets during the appeal.

**(b) Stays of Enforcements of Nonmoney Judgments and Other Appealable Orders.** Except in cases provided for in paragraph (e) of this rule, on notice and motion, and an opportunity for opposing parties to be heard, the court may also stay the enforcement of any judgment, other than a judgment, or portion of a judgment, for money, or the enforcement, force and effect of appealable interlocutory orders or any other appealable 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 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 circuit court or by the reviewing court or a judge thereof, but the extensions of time granted by the circuit 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 circuit 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.** Except in cases provided for in paragraph (e) of this rule, application for a stay ordinarily must be made in the first instance to the circuit 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 circuit court is not practical, or that the circuit 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 the certified order granting the stay to the clerk of the circuit court or administrative agency.

**(e) Automatic Stay Pending Appeal of Termination of Parental Rights.**

(1) An order terminating the parental rights of any person that is entered in a proceeding initiated under the Juvenile Court Act of 1987 shall be automatically stayed for 60 days after entry of the order of termination. If notice of appeal is filed with respect to the termination order within the 60 days, the automatic stay shall continue until the appeal is complete or the stay is lifted by the reviewing court. If notice of appeal is not filed within the 60 days, the automatic stay shall expire.

(2) The automatic stay under this rule shall stay the termination order to the extent that it would permit entry of an order of adoption without the parent's consent or surrender, and shall also operate to stay the termination order with respect to any power granted to a person or agency to consent to an adoption. In all other respects the termination order shall be unaffected. For the purposes of proceedings under the Adoption Act, a person appealing the termination of his or her rights shall be treated as a person whose parental rights have been terminated, except as provided in the first sentence of this paragraph. Neither the appeal nor the automatic stay of the termination order shall affect the trial court's continuing jurisdiction over the care, custody, visitation and support of the child, and a guardian of the child may take any authorized action other than consenting to the child's adoption.

(3) No bond shall be required with respect to a stay of adoption pending appeal of termination of parental rights.

(4)(A) A party to the Juvenile Court Act proceeding in which a termination order was entered or a party to an adoption proceeding delayed by the effect of this rule may file a motion with the reviewing court to lift the automatic stay of a termination order. The stay of an order terminating parental rights may be lifted when it is clearly in the best interests of the child on motion or by the court *sua sponte*.

(B) Motions to lift an automatic stay must be accompanied by suggestions in support of the motion and shall be served on all parties to the Juvenile Court Act proceeding and the parties to any related Adoption Act proceeding, if known. If the movant is a party to an adoption proceeding, the motion must include the caption and case number of the adoption proceeding and identify the court in which the action is pending.

(C) Motions to lift an automatic stay must be accompanied by a supporting record as provided in Rule 328. If the movant was not a party to the Juvenile Court Act proceeding and is unable to provide the supporting record, a decision on the motion shall be deferred until after the record on appeal is filed.

(D) If a stay is lifted by the reviewing court or a judge thereof, the clerk shall notify the parties and transmit the certified order lifting the stay to the clerk of the trial court. In the case of a motion filed by a party to an adoption proceeding, the clerk shall also transmit the certified order lifting the stay to the trial judge in the adoption proceeding.

**(f) 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.

**(g) 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.

**(h) Changing the Amount, Terms, and Security of the Bond or Other Form of Security After the Appeal is Docketed.** After the case is docketed in the reviewing court, that court or a judge thereof upon motion may, consistent with the provisions of paragraph (a) above, change the amount, terms or security of the bond or other form of security, whether fixed by it or by the circuit court, and failure to comply with the order of the reviewing court or judge shall terminate the stay.

**(i) 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 circuit 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.

**(j) 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.

**(k) 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.

**(l) 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.

**(m) Filing with the Circuit Court Clerk.** All original appeal bonds or other forms of security, whether approved by the circuit court or the reviewing court, shall be filed with the clerk of the circuit court in which the case was filed.

Amended October 21, 1969, effective January 1, 1970, and amended effective July 1, 1971; amended September 20, 1979, effective October 15, 1979; amended January 5, 1981, effective February 1, 1981; amended May 28, 1982, effective July 1, 1982; amended December 17, 1993, effective February 1, 1994; amended December 5, 2003, effective January 1, 2004; amended June 15, 2004, effective July 1, 2004; [amended June 22, 2017, eff. July 1, 2017](#).

Commentary  
(June 15, 2004)

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. When seeking to file a form of security other than an appeal bond, it is the judgment debtor's burden to demonstrate that the other form of security is an adequate substitute.

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 limited 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. See, *e.g.*, *Price v. Philip Morris, Inc.*, 341 Ill. App. 3d 941 (2003), *vacated by supervisory order* No. 96644 (September 16, 2003). 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. In such a case, the last sentence of the amended rule makes clear that appropriate conditions shall 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.

Paragraph (b)

This paragraph has been amended to clarify that it is inapplicable to appeals from judgments for money.

Paragraph (g)

This paragraph has been amended to be consistent with the provisions of paragraph (a)

permitting, under certain circumstances, the filing of an appeal bond or other form of security in an amount less than the full amount of the judgment plus anticipated interest and costs.

Paragraph (h)

This paragraph has been amended to clarify that a motion to change the terms or the amount of the bond must be consistent with the provisions of paragraph (a).

Paragraph (m)

This paragraph has been added because the appellate court clerks may not have appropriate facilities for keeping original bonds or other forms of security.

Commentary  
(December 17, 1993)

This rule has been reorganized to provide greater clarity to the practice of obtaining a stay of the trial court judgment. Paragraph (a) makes clear that the bond in a money judgment case must be sufficient to cover the entire amount of the judgment, interest and costs.

A certified copy of the reviewing court stay order transmitted to the trial court or administrative agency is substituted for the antiquated reviewing court clerk certificate, and the clerk's authority to approve security is removed.