

APPELLATE TIP – HOW TO STAY COLLECTION OF A JUDGMENT WHILE PURSUING POST-TRIAL REMEDIES

August 10, 2018 | News Publications



Written by: [Justin Ackerman](#)

If you find yourself in the unfortunate position of having a final judgment entered against your client, and want to file a post-trial Rule 59 or 60 motion, but Plaintiff insists on proceeding to collect on the final judgment, consider asking the court to stay enforcement of the judgment until it rules on your post-trial motion.

First, consider whether your client has the means to post a supersedeas bond. If so, this should satisfy most Plaintiffs' demands to collect during the pendency of post-trial motions.

If, however, your client does not have the means to obtain a supersedeas bond, consider moving for relief under Ariz.R.Civ.P. 62(b)(3). Under this rule, Arizona superior court judges have complete discretion to stay enforcement of the final judgment pending disposition of a post-trial motion:

On appropriate terms for the opposing party's security, the court may stay the execution of a judgment—or any proceedings to enforce it—pending disposition of ... [a] ... Rule 59 [motion] for a new trial or to alter or amend a judgment.

Id. (emphasis added); see also Fam.Law.Proc., Rule 87 (Trial court has discretion to stay execution of final judgment pending disposition of a motion for new trial).

The party against whom judgment is entered should argue that a temporary stay of collection efforts will be short — pending the Court's ruling on post-trial motion. See 2B Ariz. Prac., Civil Rules Handbook R 62, cmt. 4 (“[d]epending upon the length of time the Court anticipates will be necessary to secure such a disposition, it may be impractical to require the posting of a bond.”). In addition, it would be helpful if the client can provide some proof of financial hardship. An affidavit of financial hardship should suffice. Arizona commentators have noted when considering whether to require a bond pursuant to Rule 62, courts should look to ARCAP 7. See 2B Ariz. Prac., Civil Rules Handbook R 62, cmt. 1. ARCAP 7 “permits a downward deviation from the presumed amount if an appellant proves by clear and convincing evidence that it will likely suffer substantial economic harm if required to post a bond in the presumed amount.” *City Ctr. Executive Plaza, LLC v. Jantzen*, 237 Ariz. 37, 41, ¶ 12, 344 P.3d 339, 343 (App. 2015) (analyzing A.R.S. § 12–2108(C) and ARCAP 7(a)(2)(5)(B)).

Finally, consider the nature of the final judgment. If the final judgment consists of an award of attorney's fees only, no supersedeas bond is necessary to stay collection efforts. *City Ctr. Executive Plaza, LLC v. Jantzen*, 237 Ariz. 37, 41, ¶ 13, 344 P.3d 339, 343 (App. 2015) (“the trial court erred in considering attorneys' fees as damages in setting the amount of the supersedeas bond.”); see also *Kresock v. Gordon*, 370 P.3d 120 (App. 2016) (attorneys' fees awarded as a sanction are not damages as contemplated by supersedeas bond statute).

Note – A rule change petition is pending before the Arizona Supreme Court to amend the rule to include attorneys' fees in a supersedeas bond and to include a 15 day automatic stay of enforcement for any judgment.