

APPELLATE TIP: SUPERSEDEAS BOND RULE CHANGES

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Effective January 1, 2019, newly amended rules govern the procedures and requirements for staying the enforcement and collection of both monetary and non-monetary judgments pending appeal in Arizona's state courts. The Arizona Supreme Court adopted these revisions to ARCAP 7 and ARCP 62 and 69 pursuant to a rule-change petition filed by the Arizona State Bar. The revisions make Arizona's rules more consistent with the federal rules, and address gaps and ambiguities that existed under the former rules.

One of the biggest changes impacts the amount of a supersedeas bond required to prevent a prevailing party from collecting on a money judgment while the losing party appeals. Under former ARCAP 7(a)(4), the appealing party only needed to post a bond for the total amount of "damages," excluding punitive damages. Prior caselaw construed this to not include attorneys' fees and costs, even where the fee award was significant. *See City Center Executive Plaza, LLC v. Jantzen*, 237 Ariz. 37 (App. 2015) (construing former rule as requiring only a \$1 supersedeas bond where jury awarded \$2.3 million in fees and costs but only \$1 in nominal damages). Fortunately for many of our clients, new ARCAP 7(a)(4) now expressly includes costs, attorneys' fees and prejudgment interest included in the judgment when entered. The Supreme Court rejected, however, a recommendation to expressly include post-judgment interest and Rule 68 sanctions, so neither of those can be calculated in determining the amount of a supersedeas bond.

A number of additional revisions to ARCAP 7 were adopted, including those allowing for other forms of security to be posted in lieu of cash bonds, requiring supersedeas bonds for orders dividing assets in dissolution proceedings, providing guidance for staying injunctive or other forms of non-monetary relief, and allowing exceptions for parties who make a showing of undue hardship. ARCP 62 also adds an automatic stay of 15 days pending the filing of post-trial motions, and ARCP 69 has been revised to clarify that no post-judgment discovery can be served or taken during that time period.

Rather than posting a bond for the full amount required under ARCAP 7, the parties can stipulate to the bond amount, or the appealing party can file a motion asking the trial court to set the amount of a supersedeas bond. See ARCAP 7(a)(2). Filing a motion also stays enforcement of the judgment while the motion is pending, but it does not prevent the prevailing party from recording the judgment. ARCAP 7(a)(2).

Navigating supersedeas bond requirements can be tricky and somewhat intimidating. Regardless of whether you win or lose at trial, please contact our appellate department to assist you with this process and to help you determine the best course of action for a client in either posting a bond or requiring the opposing party to post a bond pending appeal.