

Rule 108. Stays Pending Appeal; Security**Rule 108.01 Effect of Appeal on Proceedings in Trial Court**

Subdivision 1. Generally No Stay of Enforcement of Judgment or Order on Appeal. Except as otherwise provided by rule or statute, an appeal from a judgment or order does not stay enforcement of the judgment or order in the trial court unless that court orders relief in accordance with Rule 108.02.

Subd. 2. Suspension of Trial Court's Authority to Make Orders Affecting Judgment or Order on Appeal. Except in appeals under Rule 103.03(b), the filing of a timely and proper appeal suspends the trial court's authority to make any order that affects the order or judgment appealed from, although the trial court retains jurisdiction as to matters independent of, supplemental to, or collateral to the order or judgment appealed from.

(Added effective January 1, 2010.)

Advisory Committee Comment - 2009 Amendments

Rule 108.01 is a new rule, but it is not intended to create new law. Its provisions are drawn from existing Rule 108.01, subdivision 1, and codify longstanding common law. Neither the filing of an appeal nor the posting of a cost bond required by Rule 107 stays the order or judgment appealed from. See, e.g., Anderson v. Anderson, 288 Minn. 514, 517, 179 N.W.2d 718, 721 (Minn. 1970) (stay available only upon filing of supersedeas bond, not cost bond). An appeal divests the trial court of jurisdiction over the matters appealed but only over matters necessarily involved in the order or judgment appealed from. See Spaeth v. City of Plymouth, 344 N.W.2d 815, 824 (Minn. 1984); State v. Barnes, 249 Minn. 301, 302-03, 81 N.W.2d 864, 866 (1957). The trial court retains jurisdiction over matters collateral to or supplemental to the order or judgment. See, e.g., Kellar v. Von Holtum, 605 N.W.2d 696, 700 (Minn. 2000) (trial court retained jurisdiction over motions for attorney fees and costs after appeal was perfected); Phillips-Klein Cos. v. Tiffany P'ship, 474 N.W.2d 370, 372 (Minn. App. 1991).

Rule 108.02 Motion for Stay or Injunction in Trial Court; Security

Subdivision 1. Motion in Trial Court. A party seeking any of the following relief must move first in the trial court:

- (a) a stay of enforcement of the judgment or order of a trial court pending appeal;
- (b) approval of the form and amount of security, if any, to be provided in connection with such a stay; or
- (c) an order suspending, modifying, restoring, or granting an injunction while an appeal is pending pursuant to Minn. R. Civ. P. 62.02.

Subd. 2. Security Required. Except as to cases in which a governmental body is the appellant or as otherwise provided by rule or statute, a trial court may grant the relief described in subdivision 1 of this rule if the appellant provides security in a form and amount that the trial court approves. The security provided for in this rule may be in one instrument or several. The appellant must serve proof of the security in accordance with Rule 125.02.

Subd. 3. Form of Security. The form of the security may be a supersedeas bond, a letter of credit, a deposit of cash or property with the trial court administrator, or any other form of security that the trial court approves as adequate under the circumstances. The appellant bears the burden of demonstrating the adequacy of any security to be given. Unless the trial court orders otherwise,

a stay of an order or judgment does not take effect until any security ordered is filed and notice of filing is provided to all parties.

Subd. 4. Amount of Security.

(a) In all cases, the amount of the security, if any, must be fixed at such amount as the trial court determines will preserve the value of the judgment or order to the respondent during the pendency of appeal.

(b) When the judgment or order is for the payment of money not otherwise secured, the amount of the security normally must be fixed at such sum as will cover the unpaid amount of the judgment or order, costs on appeal (to the extent security for costs has not already been given under Rule 107), interest during the pendency of the appeal, and any other damages that may be caused by depriving the respondent of the right to enforce the judgment or order during the pendency of the appeal.

(c) When the judgment or order determines the possession, ownership, or use of real or personal property (such as in actions for replevin, foreclosure, or conveyance of real property), the amount of the security normally must be fixed at such sum as will compensate the respondent for the loss of use of the property during the pendency of the appeal, costs on appeal (to the extent security for costs has not already been given under Rule 107), interest during the pendency of the appeal, and any other damages (including waste) that may be caused by depriving the respondent of the right to enforcement of the judgment or order during the pendency of the appeal.

(d) If a party seeks to stay enforcement of only part of the judgment or order on appeal, the security must be fixed at such sum as the trial court determines is sufficient to secure that portion of the judgment or order on appeal.

Subd. 5. Providers Submit to Jurisdiction of District Court. If security is provided in the form of a bond, letter of credit, or undertaking with one or more sureties, each provider (whether surety, issuer, or other person liable for the security) submits to the jurisdiction of the district court. A provider's liability may be enforced on motion in the district court, served on the provider or providers in accordance with the Minnesota Rules of Civil Procedure as if the provider or providers were a party or parties to the action, without the necessity of an independent action.

Subd. 6. Review by Court of Appeals. On a motion under Rule 127, the Court of Appeals may review the trial court's determinations as to whether a stay is appropriate, the terms of any stay, and the form and amount of security pending appeal. The motion for review must:

- (a) set forth the reasons for granting the relief requested and the facts relied on;
- (b) include originals or copies of affidavits or other sworn statements supporting the facts that are subject to dispute; and
- (c) include a copy of any submissions to the trial court, any order entered by the trial court relating to security pending appeal, and any other relevant parts of the record in the trial court.

If the Court of Appeals grants the motion, it may give relief on the same terms that a trial court may give relief under Rule 108.02, subs. 2, 3, and 4, and may require that any security that the appellant must provide be posted in the trial court.

(Added effective January 1, 2010.)

Advisory Committee Comment - 2009 Amendments

Rule 108.02, subdivision 1, requires that an application for stay of a judgment or order be brought in the trial court. Subdivision 6 of the rule provides for the trial court decision on the stay to be reviewed by the Court of Appeals and establishes the procedure for allowing the appellate court to conduct that review. Although the matter is raised by motion in the appellate court, the review is for abuse of fairly broad trial court discretion in these matters. See Axford v. W. Syndicate Inv. Co., 141 Minn. 412, 414, 168 N.W.97, 97 (1918).

Subdivision 3 recognizes that security may be provided in any of several forms. The former rule's apparent limitation to a surety bond as security is expressly removed in favor of a wider array of potential security arrangements. In many cases, a deposit into court or posting of a letter of credit may be preferable and less expensive. Deposit into court is also allowed by statute as a means not only to stay enforcement of a judgment but to remove a docketed judgment's lien against real property. See Minnesota Statutes 2008, section 548.12.

Subdivision 4 is intended to provide guidance to litigants and judges on the appropriate standards for the setting of required security for a stay. The rule addresses the amount of security required and establishes a guiding principle in subdivision 4(a) of an amount sufficient to preserve the value of the judgment or order during the appeal. For money judgments, the unpaid amount of the judgment, costs on appeal (less \$500 if secured by a cost bond), and interest during the appeal will be the usual amount. This calculation is consistent with the amount of security specified in statutes relating to supersedeas bonds. See Minnesota Statutes 2008, section 550.36 (allowing stay upon posting of bond in the amount of judgment and interest or a lesser amount allowed by a court); Minnesota Statutes 2008, section 548.12 (allowing a party to deposit money into court in amount of judgment, plus interest and costs). The determination of the amount of a bond ultimately lies in the discretion of the courts and can even be waived in its entirety, although the Minnesota Supreme Court has recognized that this discretion must be exercised sparingly. See No Power Line, Inc. v. Minn. Envtl. Quality Council, 262 N.W.2d 312, 330-31 (Minn. 1977).

Although not constrained by the rule, trial court discretion to determine the amount of required security may be limited by statute or common law. There are cases in which no stay may be available, regardless of the amount of security. Child custody orders take effect as directed by the trial court, notwithstanding an appealing party's willingness to post a bond for the purpose of obtaining a stay. See Petersen v. Petersen, 296 Minn. 147, 149, 206 N.W.2d 658, 659-60 (Minn. 1973) (stating, for the purpose of "future guidance of the bench and bar; ... that orders changing the custody of children are not affected by supersedeas or cost bonds[,] but are to take effect at whatever date the trial court specifies"). For discussion of the factors to be weighed in deciding whether or not to change custody while an appeal is pending, see Clark v. Clark, 543 N.W.2d 685, 687 (Minn. App. 1996) (holding that trial court abused its discretion in denying a stay of custody modification order, in light of drastic changes to living arrangements that would result from modification and lack of endangerment or other exigency requiring immediate change). The Court of Appeals has addressed the criteria governing whether to grant a stay in the nature of an injunction pending a certiorari appeal in DRJ, Inc. v. City of St. Paul, 741 N.W.2d 141, 144 (Minn. App. 2007) (citing Minn. R. Civ. P. 62.02 as to injunctive relief pending appeal; two juvenile rules, one of which establishes a presumption that there will be no stay pending appeal and the other of which explicitly stays further proceedings; and a criminal rule that identifies criteria governing whether to grant release pending appeal). Minnesota Statutes 2008, section 525.714, provides that the filing of an appeal stays a probate order, although an "additional bond" may be required to secure payment of any damages that may be awarded as a consequence of the appeal. But see In re Estate of Goyette, 376 N.W.2d 438, 441 (Minn. App. 1985) (holding that failure to post bond ordered by probate court precluded automatic stay of probate proceedings pending appeal).

Rule 108.03 Proceedings in Supreme Court

Where a petition to the Supreme Court for review of a decision of the Court of Appeals is filed, or a case is transferred to the Supreme Court in accordance with these rules, and security has previously been given to stay proceedings in the trial court, the security shall remain in full force and effect during the pendency of review in the Supreme Court unless otherwise ordered by the Supreme Court. The Supreme Court may make any order appropriate to preserve the status quo or require security or additional security to any person who may suffer damage due to the continued stay of proceedings in the trial court during the pendency of review in the Supreme Court.

(Added effective January 1, 2010.)

Advisory Committee Comment - 2009 Amendments

Rule 108 is replaced by an entirely new rule. The changes are intended to provide greater guidance to parties, attorneys, and the courts on how stays of trial court orders and judgments can be obtained.