

1 Lisa M. Panahi, Bar No. 023421
2 General Counsel
3 State Bar of Arizona
4 4201 N. 24th Street, Suite 100
5 Phoenix, AZ 85016-6288
6 (602) 340-7236

7 **IN THE SUPREME COURT**
8 **STATE OF ARIZONA**

9 In the Matter of:

Supreme Court No. R-18-

10 **PETITION TO AMEND RULE 7**
11 **OF THE ARIZONA RULES OF**
12 **CIVIL APPELLATE PROCEDURE**
13 **AND RULES 62 AND 69 OF THE**
14 **ARIZONA RULES OF CIVIL**
15 **PROCEDURE**

PETITION

16 Pursuant to Rule 28 of the Rules of the Arizona Supreme Court, the State Bar
17 of Arizona (“State Bar”) petitions the Court to amend Rule 7 of the Arizona Rules
18 of Civil Appellate Procedure (“ARCAP”) and Rules 62 and 69 of the Arizona Rules
19 of Civil Procedure (“Ariz. R. Civ. P.”). The proposed amendments relate to the
20 procedures for supersedeas bonds, stays on appeal, and post-judgment discovery,
21 and modify the rules in several respects:

22 (1) Proposed amendments to ARCAP 7 address gaps and ambiguities in
23 Arizona’s appeal bond framework, including issues arising from the 2011
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1 amendments to ARCAP 7 and the underlying appeal bond statute, A.R.S. Section
2 12-2108;

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4 (2) Proposed amendments to ARCAP 7 and Ariz. R. Civ. P. 62 and 69
5 incorporate, on a selective basis, aspects of the corresponding Federal Rules of Civil
6 and Appellate procedure, along with aspects of pending amendments to the federal
7 rules; and

8
9 (3) Proposed amendments to Ariz. R. Civ. P. 69 address ambiguities in the
10 current rule regarding whether a judgment creditor is entitled to pursue post-
11 judgment discovery where enforcement of the judgment is stayed on appeal, but the
12 appeal bond does not cover the full amount of the judgment.

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14 The attached Appendix A contains a blackline showing all of the proposed
15 changes. A clean version of the proposed changes is at Appendix B.

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18 **I. INTRODUCTION AND BACKGROUND**

19 In 2011, Arizona’s Chamber of Commerce and Industry proposed legislation
20 (Senate Bill 1212) to adopt appeal bond limits, modeled on national appeal bond
21 reform legislation. The result was A.R.S. § 12-2108 (“Section 12-2108”) and
22 corresponding amendments to ARCAP 7(a)’s provisions for setting the amount of
23 bonds on appeal. Both ARCAP 7(a) and Section 12-2108 limit a supersedeas bond
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1 to the lesser of the “total amount of damages awarded, excluding punitive damages,”
2 “fifty percent of the appellant’s net worth,” or “twenty-five million dollars.” *See*
3 ARCAP 7(a)(4). The stated purpose of the legislation was to address the difficulty
4 faced by businesses required to post appeal bonds in cases with “overly large damage
5 awards,” including punitive damage awards. The “Findings and Purpose” of SB
6 1212 stated that:
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8
9 (a) “across the nation and in Arizona, the size of damage awards in civil
10 actions has escalated in recent years;”

11
12 (b) “the existence of an overly large appeal bond infringes on the due
13 process rights of appellants,” because “defendants who are subject to overly large
14 damage awards may simply be unable to post a bond to protect their assets,” and
15 may be “forced into bankruptcy or compelled to settle their case;” and
16

17 (c) “[l]imiting the bond requirement to the lesser of the *value of the*
18 *judgment*, fifty per cent of the appellant’s net worth or twenty-five million dollars
19 regardless of the value of the judgment would ensure that defendants can fully
20 exercise their fundamental right to appeal” (emphasis supplied).
21

22 After the statute was amended, the Administrative Office of the Courts filed
23 Petition No. R-11-0019, proposing conforming amendments to ARCAP 7(a), which
24 were adopted by the Arizona Supreme Court effective January 1, 2012.
25

1 In the several years since Section 12-2108 and ARCAP 7(a)'s conforming
2 amendments took effect, Arizona courts and practitioners have identified gaps in the
3 appeal bond scheme, as well as several areas of ambiguity. Among other things,
4 Section 12-2108 does not address—and it appears that the legislature did not
5 expressly consider—bonding requirements for nonmonetary judgments or other
6 judgments awarding injunctive or equitable relief. Nor does the legislature appear to
7 have considered how limiting the bond to the “total amount of damages awarded”
8 would affect bonds in cases in which significant costs and fees are included in the
9 judgment, but are not necessarily part of compensatory “damages.” Indeed,
10 comparing Section 12-2108 and ARCAP 7 to the legislature’s “Findings and
11 Purpose” illustrates that the legislature may have used the phrases “total amount of
12 damages” and “value of the *judgment*” interchangeably. Finally, confusion has
13 arisen over application of the statutory bonding limits to family law judgments
14 awarding monetary relief that is not considered compensatory damages.
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19 These and other issues are illustrated by Arizona case law interpreting the
20 current appeal bond framework:
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22 ***1. Fees and Cost Awards Excluded from Damages in Computing Bond***

23 ***Amount:*** Despite the somewhat unclear legislative history, Arizona appellate courts
24 have concluded that the “total amount of damages awarded” language in Section 12-
25

1 2108 and ARCAP 7(a)(4)(A) refers strictly to compensatory damages and does not
2 include awards of costs or attorney's fees. Thus, where a judgment included \$1.00
3 in damages, an award of injunctive relief, and \$2.3 million in attorney's fees, the
4 amount of the supersedeas bond required to stay enforcement of the entire judgment
5 on appeal was one dollar. *See City Center v. Jantzen*, 237 Ariz. 37, 344 P.3d 339
6 (App. 2015).
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9 **2. Uncertainty Regarding Application of Appeal Bond Limits of ARCAP**
10 **7(a)(4) to Judgments for Injunctive/Equitable Relief:** Neither Section 12-2108 nor
11 ARCAP 7 address how bonds should be set to protect an appellee on appeal of a
12 judgment awarding equitable/injunctive relief. In *Wells Fargo v. Rogers*, 239 Ariz.
13 106, 366 P.3d 583 (App. 2016), the superior court entered a nonmonetary judgment
14 declaring spendthrift trust provisions invalid, a declaratory judgment that Wells
15 Fargo was entitled to receive all future trust distributions, and an injunction ordering
16 that the trust beneficiary could not prevent trust distributions to Wells Fargo. The
17 trust beneficiary appealed and sought a stay, arguing that no bond was required under
18 the formula in ARCAP 7(a)(4). The superior court agreed, applying *City Center*
19 (discussed above) and staying the judgment without requiring a bond. The appellate
20 court did not reach the issue of whether the appeal bond cap of ARCAP 7(a)(4)
21 applied to judgments awarding injunctive relief (which, if applicable, would dictate
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1 a bond of “zero”). Instead, it held that ARCAP 7(a)(2) allows the court to issue *other*
2 orders (apart from supersedeas bonds) to preserve the status quo or the effectiveness
3 of its judgment. Accordingly, the case was remanded for consideration of whether
4 an escrow account or some “other arrangement” should be ordered to protect Wells
5 Fargo’s interest in trust distributions while the appeal was pending.
6

7 ***3. Uncertainty Regarding Application of Bonding Limits to Dissolution***

8 ***Cases.*** Arizona case law also illustrates uncertainty regarding whether an award of
9 money in a dissolution proceeding is subject to the bonding requirements of ARCAP
10 7(a)(4). In *Bobrow v. Herrod*, 239 Ariz. 180, 367 P.3d 84 (App. 2016), the husband
11 in a dissolution proceeding was ordered to pay the wife over one million dollars for
12 her marital interest in a vacation home, along with additional sums for
13 reimbursement of living expenses. The superior court applied ARCAP 7(a)(4),
14 requiring the husband to post a bond in the full amount of the monetary award. On
15 appeal, the husband argued that the amounts awarded were not “damages” and
16 hence, were not subject to ARCAP 7(a)(4). In reviewing the issue, the appellate court
17 noted that ARCAP 7(a)(4) and the underlying statute (A.R.S. § 12-2108) require
18 setting an appeal bond in the “total amount of damages awarded.” The court
19 reasoned that although awards in dissolution proceedings are not typically referred
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1 to as “damages,” the legislative history¹ and the “spirit and purpose” of ARCAP 7
2 and Section 12-2108 supported setting the bond in the full amount of the award under
3 the decree.
4

5 The proposed amendments address these gaps and ambiguities, as well as other
6 issues in need of further clarification under ARCAP 7 and Ariz. R. Civ. P. 62 and
7 69.
8

9 **II. OVERVIEW OF PROPOSED AMENDMENTS**

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11 An overview of the proposed amendments to ARCAP 7 (Section A), Ariz. R.
12 Civ. P. 62 (Section B), and Ariz. R. Civ. P. 69 (Section C), is set forth below.²
13

14 **A. Proposed Changes to ARCAP 7**

15 **1. ARCAP 7(a)(4)-(7): Amount of the bond for monetary** 16 **judgments; bonds for non-monetary judgments; bonds for** 17 **family court judgments**

21 ¹ The Court of Appeals relied on the statutory language of Section 12-2108, which
22 provides that its bond limits apply “[i]f a plaintiff in any civil action obtains a
23 judgment under any legal theory.” It also cited portions of the legislative history
explaining that civil actions “can involve . . . family law issues, such as divorce.”

24 ² Before filing this Petition, the State Bar sought input from interested groups,
25 including the Bar’s appellate and family law sections, and the Arizona Chamber of
Commerce & Industry (“Chamber”). The Chamber has indicated that it may
comment on the Petition as part of the rule petition process.

1 The State Bar’s proposed amendments to ARCAP 7 would alter the current
2 supersedeas bond requirements in three principal ways:

3
4 **First**, proposed amendments to ARCAP 7(a)(4) clarify an ambiguity in the
5 underlying appeal bond statute, which uses the term “damages” despite legislative
6 history suggesting that the legislature intended for the entire “value of the judgment”
7 (excluding punitive damages) to be considered in setting the bond amount.³ The
8 proposed amendment specifies that in setting the bond amount, the court must
9 consider “*damages, costs, attorney’s fees, and prejudgment interest included in the*
10 *judgment when entered, excluding punitive damages.*” In contrast, the current rule
11 refers only to the total amount of “damages awarded excluding punitive damages.”
12 This proposed change addresses the *City Center v. Jantzen* scenario, discussed
13 above, where the court concluded that the statute and rule dictated a bond amount of
14 \$1.00, even though the judgment included \$2.3 million in attorney’s fees. The
15 proposed amendment also better accounts for the realities of litigation in Arizona,
16 where fees and costs are awarded in a significant number of cases. *See, e.g., A.R.S.*
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21 _____
22 ³ To the extent that the proposed change to ARCAP 7(a)(4) clarifies a statutory
23 ambiguity and is consistent with the legislative history, a statutory amendment may
24 not strictly be necessary. Nevertheless, a conforming statutory change to clarify the
25 types of monetary awards that may be included in computing the bond amount—as
provided in the proposed rule change—would eliminate any potential conflict or
ambiguity.

1 § 12-341 (recovery of costs to prevailing party); *id.* § 12-341.01 (recovery of
2 attorney’s fees in contract actions).

3
4 **Second**, the proposed amendments address the amount of an appeal bond for
5 nonmonetary judgments. As illustrated by *Wells Fargo v. Rogers*, discussed above,
6 current ARCAP 7(a)(4) addresses setting the bond amount where damages are
7 awarded, but provides no guidance on setting the bond amount for other types of
8 judgments. Proposed ARCAP 7(a)(5) addresses setting the bond amount for
9 judgments that include the recovery of real or personal property. *See* Proposed
10 ARCAP 7(a)(5) (“Amount of the Bond—Judgment for Recovery or Property”). And
11 proposed ARCAP 7(a)(6) similarly addresses setting the bond amount for other
12 types of nonmonetary judgments, such as those awarding injunctive or equitable
13 relief. *See* Proposed ARCAP 7(a)(6) (“Amount of the Bond—Other Judgment”).
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17 **Third**, as discussed above, while current ARCAP 7 refers to the amount of
18 “damages” awarded, family court monetary awards typically do not constitute
19 “compensatory damages.” *See, e.g.*, A.R.S. § 25-318 (orders dividing marital
20 property); *Bobrow*, 239 Ariz. at 183, 367 P.3d at 87 (dissolution award not
21 “compensatory damages”). Proposed ARCAP 7(a)(7) addresses this gap in the
22 current rule. Notably, the proposal departs from *Bobrow*’s strict application of
23 ARCAP 7(a)(4)’s bond formula, and instead provides the superior court with
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1 flexibility to take into account “the judgment as a whole and whether requiring a
2 bond would impose an undue hardship.” *See* Proposed ARCAP 7(a)(7).

3
4 **2. ARCAP 7: Amendments incorporating aspects of pending
5 federal rule amendments**

6 Consistent with the goal of federalizing and modernizing the Arizona rules
7 where appropriate, proposed ARCAP 7 adopts aspects of pending changes to Fed.
8 R. Civ. P. 62 [that will take effect December 2019.]

9
10 *First*, the proposal incorporates pending changes to Fed. R. Civ. P. 62 that
11 will replace the word “appellant” with the term “party,” recognizing that a party may
12 seek a bond before filing a notice of appeal (such as pending disposition of a post-
13 trial motion). Although current ARCAP 7(a) states that the bond may be filed
14 “before or after” a notice of appeal is filed, the rule uses the terms appellant and
15 appellee throughout. ARCAP 7(a)(1)(A) also provides, inconsistently, that a
16 supersedeas bond “is a bond filed in the superior court . . . which stays enforcement
17 of, or execution on, a judgment *while an appeal is pending.*” The proposed
18 amendment addresses this inconsistency by deleting the phrase “while an appeal is
19 pending” from ARCAP 7(a)(1)(A) and by eliminating the terms “appellee” and
20 “appellant” throughout ARCAP 7.
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1 *Second*, the proposal incorporates aspects of the pending changes to federal
2 Rule 62 intended to clarify that security may be in a form other than a bond.⁴ ARCAP
3 7(a)(1)(A) would be amended to expressly provide that the terms “bond” and
4 “supersedeas bond” as used in the Rule “also includes other types of security as
5 ordered by the superior court in lieu of a supersedeas bond.” Corresponding changes
6 are made throughout ARCAP 7, as well as in Rule 62.
7

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9 **B. Proposed Changes to Ariz. R. Civ. P. 62**

10 **1. Ariz. R. Civ. P. 62: Automatic stay and other federalizing**
11 **changes**

12 The State Bar proposes amending Rule 62 to include a 15-day “automatic
13 stay” of execution and enforcement of a monetary judgment “unless the court orders
14 otherwise.” This “automatic stay” provision follows the approach in Fed. R. Civ. P.
15 62, except that the current automatic stay period under the federal rule is 14 days.⁵
16 Rule 62(a) also would be amended to add the following sentence, unique to
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19 _____
20 ⁴ The pending changes to Fed. R. Civ. P. 62 and Fed. R. App. P. 8(b) eliminate the
21 term “supersedeas bond” as “antiquated” and “too limiting,” replacing it with the
22 phrase “bond or other security.” Because the term “supersedeas bond” has a long
23 history of use in Arizona and appears throughout ARCAP 7, the State Bar’s proposal
retains the term, while at the same time clarifying that other types of security may
be ordered.

24 ⁵ The stay period corresponds to the former federal time limit of 14 days for motions
25 brought under Federal Rules of Civil Procedure 50, 52, or 59. The pending federal
amendments will increase the stay period to 30 days.

1 Arizona’s rule: “During the 15-day period, unless and until a bond or other security
2 is posted, a party may record a judgment.” This parallels current ARCAP 7(a)(2),
3 which provides that filing a motion for a supersedeas bond temporarily stays
4 enforcement of the judgment until the court denies the motion or sets the bond
5 amount, but also allows that “until a bond is posted, a party may record a judgment.”
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8 The State Bar proposes other stylistic changes to Rule 62 to incorporate other
9 aspects of the pending changes to Fed. R. Civ. P. 62.

10 **C. Ariz. R. Civ. P. 69**

11 **1. Ariz. R. Civ. P. 69(c)(1): Automatic stay**

12
13 To conform to the Rule 62 changes addressed above, the State Bar proposes
14 to amend Rule 69(c)(1) to prohibit discovery during the 15-day automatic stay of a
15 judgment, unless the court orders otherwise for “good cause.”
16

17 **2. Ariz. R. Civ. P. 69(c)(2)-(4): Proposed revisions regarding**
18 **postjudgment discovery**

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20 Current Rule 69 does not explicitly address whether discovery is allowed if
21 enforcement of a judgment is stayed on appeal, and does not expressly allow for
22 discovery where the amount of the appeal bond is less than the full amount of the
23 judgment. Practitioners report that Arizona superior court judges have reached
24 different interpretations of the rule, with some judges denying discovery if a stay is
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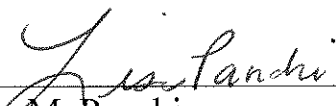
1 in place, and other judges permitting discovery, at least where the bond does not
2 fully secure the judgment.⁶

3
4 The proposed amendments to Rule 69 clarify that even if enforcement of a
5 judgment is stayed on appeal, the superior court may permit discovery if the amount
6 of any posted security does not cover the total amount of the monetary judgment
7 (meaning that the judgment creditor is under-secured), or if the discovery is
8 otherwise necessary to protect the appellee's interests while the appeal is pending.
9

10 **III. CONCLUSION**

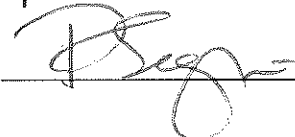
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12 For the foregoing reasons, the State Bar respectfully petitions this Court to
13 amend ARCAP 7 and Rules 62 and 69 as set forth in the attached Appendices.
14

15 RESPECTFULLY SUBMITTED this 10th day of January, 2018.
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19 _____
20 Lisa M. Panahi
21 General Counsel
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24 ⁶ This issue was the subject of a Petition for Review filed with the Arizona Supreme
25 Court in *Hubbard v. Trebesch*, CV-16-0238-PR, but the Court denied review on
March 6, 2017.

1 Electronic copy filed with the
2 Clerk of the Supreme Court of Arizona
3 this 10th day of January, 2018.

4 by: 

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APPENDIX A

Rule 7. Stay of Proceedings to Enforce a Judgment

(a) Supersedeas ~~Bond~~Bonds and Other Security.

(1) *Generally; Exceptions.*

- (A) A supersedeas bond is a bond filed in the superior court, as provided by this Rule and by applicable statutes, which stays enforcement of, or execution on, a judgment ~~while an appeal is pending. The appellant. As used in this Rule, the term “bond” or “supersedeas bond” also includes other types of security as ordered by the superior court in lieu of a supersedeas bond. A party may file a supersedeas bond before or after filing a notice of appeal.~~
- (B) ~~An appellant~~A party may not obtain a supersedeas bond to stay an award of custody of children or the payment of spousal maintenance or child support.
- (C) A judgment against the State, or an agency or a political subdivision of the State, is stayed as provided by Rule 62(e) of the Arizona Rules of Civil Procedure.
- ~~(D) “Appellant” when used in this Rule 7 includes a cross-appellant.~~

(2) *Setting the Bond by Stipulation or Motion; Stay; Other Orders.* The amount of the bond may be determined by stipulation or motion. Filing a motion in the superior court for a supersedeas bond under this Rule temporarily stays enforcement of, or execution on, the judgment, with the same effect as described in Rule 7(b), until the superior court has either denied the motion or set the bond amount and provided appropriate time for posting the bond. However, until a bond is posted, a party may record a judgment. ~~The~~Unless the motion is uncontested, on request of any party, the superior court will promptly~~must~~ hold a hearing on a motion to set bond. The superior court may enter any further order, in lieu of or in addition to the bond, which may be appropriate to preserve the status quo or the effectiveness of the judgment.

(3) *Setting the Amount of the Bond Ex Parte.* The superior court may determine the amount of the bond ex parte if the ~~appellant~~requesting party submits a motion with an affidavit:

- (A) ~~S~~stating that the ~~appellant~~party has made a good faith attempt to obtain a stipulation from the other parties; and
- (B) ~~D~~describing the ~~appellant~~party's efforts, if any, to give notice, or the reasons why it is not feasible under the circumstances to give the other parties an opportunity to be heard before the setting of bond.

(4) *Amount of the Bond.* ~~The~~Monetary Judgment. Except for family court judgments governed by Rule 7(a)(7), and subject to Rule 7(a)(9), if the

judgment includes a monetary award, the amount of the bond relating to the monetary award must be the lowest of the following:

- (A) The total amount of damages awarded, costs, attorney's fees, and prejudgment interest included in the judgment when entered, excluding punitive damages;
- (B) Fifty per cent/fifty percent of the appellant's net worth of the party seeking the stay; or
- (C) Twenty-five million dollars.

The appellant requesting party must prove net worth by a preponderance of the evidence.

(5) Amount of the Bond—Judgment for Recovery of Property. If the judgment includes the recovery of an interest in real or personal property, with respect to that portion of the judgment, the superior court must determine the amount of the bond, if any, that the requesting party must post. Subject to Rule 7(a)(7) and (9), the amount of the bond must be at least:

- (A) if the property interest is in real property, its fair rental value or the value of projected revenues while the appeal is pending; or
- (B) if the property interest is personal, its value on the date the court entered judgment.

(6) Amount of the Bond—Other Judgment. If the judgment includes an injunction, or relief other than an award of money or recovery of an interest in property, with respect to that portion of the judgment, the superior court must determine the amount of the bond, if any, that the requesting party must post. The superior court may issue any other orders as provided in Arizona Rule of Civil Procedure Rule 62(d). Subject to Rule 7(a)(9), the superior court should consider the bond or other orders needed to adequately:

- (A) protect the adverse party against loss or damage that such party is likely to suffer from a stay if the judgment is affirmed; and
- (B) preserve the status quo or the effectiveness of the judgment.

(7) Amount of the Bond—Family Court Judgments. For that portion of any family court judgment that divides assets or orders the transfer of property or money under A.R.S. § 25-318, or that awards costs or expenses under A.R.S. § 25-324, the superior court must determine the amount of the bond, if any, that the requesting party must post, taking into account the judgment as a whole and whether requiring a bond would impose an undue hardship.

(8) Stay of Judgment Ordering Execution of an Instrument or Sale of Perishable Property. The requirements of Arizona Rule of Civil Procedure 62(f), as applicable,

also apply to the enforcement of, or execution on, any judgment under Rule 7(a)(5), (6), or (7).

(9) Exceptions.

- (A) Notwithstanding Rule 7(a)(4), the superior court may require ~~an appellant~~a requesting party to post a bond in an amount up to the full amount of the judgment if an ~~appellee~~adverse party proves by clear and convincing evidence that the ~~appellant~~requesting party is intentionally dissipating assets outside the ordinary course of business to avoid payment of a judgment.
- (B) The superior court also may lower the bond amount to an amount that will not cause ~~an appellant~~a requesting party substantial economic harm ~~if the appellant,~~or may modify or reduce any other security required under these rules, if the requesting party proves by clear and convincing evidence that ~~the appellant~~it is likely to suffer substantial economic harm if required to post a bond in the amount ~~set~~required under Rule 7(a)(4) ~~through (7).~~
- (C) In determining the amount of the bond, the superior court may consider whether there is other security for the judgment, or whether the sheriff or the court has custody of any of the property in controversy.

(610) Objections to the Bond.

- (A) The ~~appellant~~requesting party must serve a copy of the bond, and serve a copy of or provide an adequate description of other security, on the other parties before ~~filing the bond~~is filed or other security is deposited with the superior court clerk.
- (B) Any party may file objections within 5 days after the ~~appellant~~requesting party serves a copy of the bond, specifying reasons why the bond is erroneous or defective, or why the surety or other security provider is unqualified. If the court made an ex parte determination of the ~~bond amount,~~a party of the bond, any other ~~than the appellant~~also party may object to the sufficiency of the amount. A party waives any errors, defects, or insufficiencies in a supersedeas bond that are not specified in timely filed objections.
- (C) If no party has timely objected, the ~~appellant~~requesting party may file the bond, or deposit other security as ordered by the superior court, with the superior court clerk. Otherwise, the superior court will hold a hearing within 10 days after service of objections. The ~~appellant~~requesting party may file the bond or deposit other security with the superior court clerk after the hearing on those objections, as allowed by the superior court.

(711) Notice of Filing Bond or Other Security. The superior court clerk will distribute a notice to all other parties if ~~the appellant files a supersedeas~~ bond is filed or other security is deposited.

(b) Effect of a Stay.

(1) **Generally.** If ~~an appellanta~~ party requesting a stay files a supersedeas bond as stipulated or as ordered by the superior court, and if the appellant has complied with all other conditions imposed by the superior court, then this Rule automatically stays enforcement of, and execution on, the judgment and all proceedings related to the execution on the judgment.

(2) **Prior Order.** If the superior court has issued an order allowing execution on the judgment before ~~the filing of a supersedeas bond is filed,~~ the superior court clerk must promptly give notice to the sheriff and must recall the execution, and there may not be any further execution on the judgment pending the appeal's resolution.

(3) **Prior Lien.** If another party has recorded a judgment lien before ~~the filing of a supersedeas bond is filed,~~ that party must promptly record a release of the lien.

(c) Power of an Appellate Court to Enter a Stay, an Injunction, or Other Order. This Rule does not limit the power of an appellate court, or of an appellate judge or justice, to stay proceedings ~~during the pendency of~~ while an appeal is pending. A party requesting a stay from an appellate court under this Rule must first request the stay in the superior court. An appellate court or an appellate judge or justice also may suspend, modify, restore, or grant an injunction ~~during the pendency of~~ while an appeal is pending, may enter any order appropriate to preserve the status quo; and may enter any order to preserve the effectiveness of the decision that the appellate court will enter.

(d) ~~Judgment Against a Surety.~~ Proceeding Against a Surety or Other Security Provider. ~~A surety that provides a supersedeas bond under this Rule~~ If a party gives security in the form of a bond or other security with one or more sureties or other security providers, each provider submits to the jurisdiction of the superior court. The surety and irrevocably appoints the superior court clerk as the surety's agent on whom a party may serve any documents papers affecting the surety's liability on the bond or undertaking may be served. A party may enforce the ~~surety's~~ surety security provider's liability by motion and is not required to file an independent action against the surety. The party seeking enforcement must serve the superior court clerk with the motion and any notice of the motion required by the superior court, and the clerk must then promptly mail or otherwise distribute copies to the ~~surety if the clerk knows the surety's~~ surety security provider whose address is known.

Rule 62. Stay of Proceedings to Enforce a Judgment

- (a) **No Automatic Stay of Enforcement.** Except as provided in ~~Arizona Rule of Civil Appellate Procedure 7~~ or as otherwise ordered by the court, an interlocutory or final judgment—including in an action for an injunction or a receivership—is not stayed after being entered, even if an appeal is taken. Rule 62(d), (e), and (f), execution on a judgment and proceedings to enforce it are stayed for 15 days after its entry, unless the court orders otherwise. During the 15-day period, unless and until a bond or other security is posted, a party may record a judgment.
- (b) **Stay Pending the Disposition of a Motion.** On appropriate terms for the ~~opposing~~adverse party's security, the court may stay the execution of a judgment—or any proceedings to enforce it—pending disposition of any of the following motions:
- (1) under Rule 50, for judgment as a matter of law;
 - (2) under Rule 52(b), to amend the findings or for additional findings;
 - (3) under Rule 59, for a new trial or to alter or amend a judgment;
 - (4) under Rule 60(a) and (b), for relief from a judgment or order; or
 - (5) when justice so requires in other instances until such time as the court may fix.
- (c) **Stay by Bond or Other Security.** At any time after judgment is entered, a party may obtain a stay by supersedeas bond or other security as provided in Rule 7 of the Arizona Rules of Civil Appellate Procedure.
- (d) **Stay of an Injunction or Receivership.** Unless the court orders otherwise, an interlocutory or final judgment in an action for an injunction or receivership is not stayed after being entered, even if an appeal is taken.
- (e) **Injunction Pending an Appeal.** While an appeal is pending from an interlocutory order or final judgment that grants, continues, modifies, refuses, dissolves, or denies~~refuses to dissolve or modify~~ an injunction, the court may suspend, modify, restore, or grant an injunction on such terms for bond, security, or otherwise that preserve the ~~opposing~~adverse party's rights.
- (~~d~~f) **Stay of Judgment Ordering Execution of an Instrument or Sale of Perishable Property.**
- (1) ***Judgment Directing Execution of Instrument.*** If a party appeals a judgment or order directing the execution of a conveyance or other instrument, the judgment or order may not be stayed unless and until the conveyance or other instrument is executed and deposited with the clerk pending the outcome of the appeal.

(2) ***Judgment Directing Sale of Perishable Property and Distribution of Proceeds.*** A judgment or order directing the sale of perishable property may not be stayed pending appeal, but the proceeds of the sale must be deposited with the clerk pending the outcome of the appeal.

(eg) Stay of a Judgment Against the State or Its Agencies or Political Subdivisions.

(1) ***Monetary Judgments.*** If a monetary judgment is entered against the State of Arizona or one of its agencies or political subdivisions, the judgment is automatically stayed upon the filing of an appeal.

(2) ***Nonmonetary Judgments.*** Subject to Rule 62(a), if a judgment other than a monetary judgment is entered against the State of Arizona or one of its agencies or political subdivisions, the judgment is not automatically stayed upon the filing of an appeal. If a court grants a stay of such a judgment, it may not require a bond, obligation, or other security.

(fh) Stay of Judgment Entered Under Rule 54(b). A court may stay the enforcement of a final judgment entered under Rule 54(b) until it enters a later judgment or judgments, and may prescribe terms necessary to secure the benefit of the stayed judgment for the party in whose favor it was entered.

(gi) Stay of a Judgment in Rem. If a claimant has filed a timely claim to the property and is not in default, a judgment in rem is not self-executing until 15 days after its entry, and no execution or other process may issue on the judgment during that time.

Rule 69. Execution; Postjudgment Discovery

- (a) **Generally.** A monetary judgment is enforced by a writ of execution, unless the court orders otherwise. A party may execute on a judgment—and seek relief in proceedings supplementary to and in aid of judgment or execution—as provided in these rules, statutory remedies, and other applicable law.
- (b) **Special Writ.** If a judgment is for personal property and the court finds that the property has a special value to the prevailing party, the court may award the prevailing party a special writ for the seizure and delivery of the specific property, in addition to any other relief provided in these rules and other applicable law.
- (c) **~~Obtaining Discovery.~~ Discovery.**
- (1) **Generally.** Unless the court orders otherwise for good cause, no discovery may be served or taken during the 15-day automatic stay of enforcement of, or execution on, a judgment under Rule 62(a). If no further stay is ordered, after that 15-day period and ~~in aid of the judgment or execution, the judgment creditor or a successor in interest whose interest appears from the~~ of record may obtain discovery from any person—including the judgment debtor—as provided in these rules and other applicable law.
- (2) **After Stay of Judgment.** If enforcement of, or execution on, a judgment is stayed under Rule 7 of the Arizona Rules of Civil Appellate Procedure, or by other rule or court order, the court may allow discovery as provided in these rules and other applicable law if:
- (A) the amount of any supersedeas bond or other security posted does not cover the total amount of any monetary judgment, including costs, attorney’s fees, prejudgment interest, or punitive damages included in the judgment when entered; or
- (B) the discovery is necessary to protect the judgment creditor’s interest in the judgment during the pendency of post-trial motions or an appeal.
- (3) **Limitations.** The court may limit discovery under Rule 69(c)(2) to protect the party against whom the discovery is requested from undue burden or expense while the appeal is pending.

APPENDIX B – CLEAN VERSION

Rule 7. Stay of Proceedings to Enforce a Judgment

(a) Supersedeas Bonds and Other Security.

(1) *Generally; Exceptions.*

- (A) A supersedeas bond is a bond filed in the superior court, as provided by this Rule and by applicable statutes, which stays enforcement of, or execution on, a judgment. As used in this Rule, the term “bond” or “supersedeas bond” also includes other types of security as ordered by the superior court in lieu of a supersedeas bond. A party may file a supersedeas bond before or after filing a notice of appeal.
- (B) A party may not obtain a supersedeas bond to stay an award of custody of children or the payment of spousal maintenance or child support.
- (C) A judgment against the State, or an agency or a political subdivision of the State, is stayed as provided by Rule 62(g) of the Arizona Rules of Civil Procedure.

(2) *Setting the Bond by Stipulation or Motion; Stay; Other Orders.* The amount of the bond may be determined by stipulation or motion. Filing a motion in the superior court for a supersedeas bond under this Rule temporarily stays enforcement of, or execution on, the judgment, with the same effect as described in Rule 7(b), until the superior court has either denied the motion or set the bond amount and provided appropriate time for posting the bond. However, until a bond is posted, a party may record a judgment. Unless the motion is uncontested, on request of any party, the superior court must hold a hearing on a motion to set bond. The superior court may enter any further order, in lieu of or in addition to the bond, which may be appropriate to preserve the status quo or the effectiveness of the judgment.

(3) *Setting the Amount of the Bond Ex Parte.* The superior court may determine the amount of the bond ex parte if the requesting party submits a motion with an affidavit:

- (A) stating that the party has made a good faith attempt to obtain a stipulation from the other parties; and
- (B) describing the party’s efforts, if any, to give notice, or the reasons why it is not feasible under the circumstances to give the other parties an opportunity to be heard before the setting of bond.

(4) *Amount of the Bond—Monetary Judgment.* Except for family court judgments governed by Rule 7(a)(7), and subject to Rule 7(a)(9), if the judgment includes a

monetary award, the amount of the bond relating to the monetary award must be the lowest of the following:

- (A) the total amount of damages, costs, attorney's fees, and prejudgment interest included in the judgment when entered, excluding punitive damages;
- (B) fifty percent of the net worth of the party seeking the stay; or
- (C) twenty-five million dollars.

The requesting party must prove net worth by a preponderance of the evidence.

(5) ***Amount of the Bond—Judgment for Recovery of Property.*** If the judgment includes the recovery of an interest in real or personal property, the superior court must determine the amount of the bond, if any, that the requesting party must post. Subject to Rule 7(a)(7) and (9), the amount of the bond must be at least:

- (A) if the property interest is in real property, its fair rental value or the value of projected revenues while the appeal is pending; or
- (B) if the property interest is personal, its value on the date the court entered judgment.

(6) ***Amount of the Bond—Other Judgment.*** If the judgment includes an injunction, or relief other than an award of money or recovery of an interest in property, the superior court must determine the amount of the bond, if any, that the requesting party must post. The superior court may issue any other orders as provided in Arizona Rule of Civil Procedure Rule 62(d). Subject to Rule 7(a)(9), the superior court should consider the bond or other orders needed to adequately:

- (A) protect the adverse party against loss or damage that such party is likely to suffer from a stay if the judgment is affirmed; and
- (B) preserve the status quo or the effectiveness of the judgment.

(7) ***Amount of the Bond—Family Court Judgments.*** For that portion of any family court judgment that divides assets or orders the transfer of property or money under A.R.S. § 25-318, or that awards costs or expenses under A.R.S. § 25-324, the superior court must determine the amount of the bond, if any, that the requesting party must post, taking into account the judgment as a whole and whether requiring a bond would impose an undue hardship.

(8) ***Stay of Judgment Ordering Execution of an Instrument or Sale of Perishable Property.*** The requirements of Arizona Rule of Civil Procedure 62(f), as applicable, also apply to the enforcement of, or execution on, any judgment under Rule 7(a)(5), (6), or (7).

(9) *Exceptions.*

- (A) Notwithstanding Rule 7(a)(4), the superior court may require a requesting party to post a bond in an amount up to the full amount of the judgment if an adverse party proves by clear and convincing evidence that the requesting party is intentionally dissipating assets outside the ordinary course of business to avoid payment of a judgment.
- (B) The superior court also may lower the bond amount to an amount that will not cause a requesting party substantial economic harm, or may modify or reduce any other security required under these rules, if the requesting party proves by clear and convincing evidence that it is likely to suffer substantial economic harm if required to post a bond in the amount required under Rule 7(a)(4) through (7).
- (C) In determining the amount of the bond, the superior court may consider whether there is other security for the judgment, or whether the sheriff or the court has custody of any of the property in controversy.

(10) *Objections to the Bond.*

- (A) The requesting party must serve a copy of the bond, and serve a copy of or provide an adequate description of other security, on the other parties before the bond is filed or other security is deposited with the superior court clerk.
- (B) Any party may file objections within 5 days after the requesting party serves a copy of the bond, specifying reasons why the bond is erroneous or defective, or why the surety or other security provider is unqualified. If the court made an ex parte determination of the amount of the bond, any other party may object to the sufficiency of the amount. A party waives any errors, defects, or insufficiencies in a supersedeas bond that are not specified in timely filed objections.
- (C) If no party has timely objected, the requesting party may file the bond, or deposit other security as ordered by the superior court, with the superior court clerk. Otherwise, the superior court will hold a hearing within 10 days after service of objections. The requesting party may file the bond or deposit other security with the superior court clerk after the hearing on those objections, as allowed by the superior court.

- (11) ***Notice of Bond or Other Security.*** The superior court clerk will distribute a notice to all other parties if a bond is filed or other security is deposited.

(b) *Effect of a Stay.*

- (1) ***Generally.*** If a party requesting a stay files a supersedeas bond as stipulated or as ordered by the superior court, and has complied with all other conditions imposed by the superior court, then this Rule automatically stays enforcement of, and

execution on, the judgment and all proceedings related to the execution on the judgment.

(2) **Prior Order.** If the superior court has issued an order allowing execution on the judgment before a supersedeas bond is filed, the superior court clerk must promptly give notice to the sheriff and must recall the execution, and there may not be any further execution on the judgment pending the appeal's resolution.

(3) **Prior Lien.** If another party has recorded a judgment lien before the supersedeas bond is filed, that party must promptly record a release of the lien.

(c) **Power of an Appellate Court to Enter a Stay, an Injunction, or Other Order.** This Rule does not limit the power of an appellate court, or of an appellate judge or justice, to stay proceedings while an appeal is pending. A party requesting a stay from an appellate court under this Rule must first request the stay in the superior court. An appellate court or an appellate judge or justice also may suspend, modify, restore, or grant an injunction while an appeal is pending, may enter any order appropriate to preserve the status quo; and may enter any order to preserve the effectiveness of the decision that the appellate court will enter.

(d) **Proceeding Against a Surety or Other Security Provider.** If a party gives security in the form of a bond or other security with one or more sureties or other security providers, each provider submits to the jurisdiction of the superior court and irrevocably appoints the superior court clerk as its agent on whom any papers affecting its liability on the bond or undertaking may be served. A party may enforce the security provider's liability by motion and is not required to file an independent action. The party seeking enforcement must serve the superior court clerk with the motion and any notice of the motion required by the superior court, and the clerk must then promptly mail or otherwise distribute copies to the security provider whose address is known.

Rule 62. Stay of Proceedings to Enforce a Judgment

- (a) **Automatic Stay of Enforcement.** Except as provided in Rule 62(d), (e), and (f), execution on a judgment and proceedings to enforce it are stayed for 15 days after its entry, unless the court orders otherwise. During the 15-day period, unless and until a bond or other security is posted, a party may record a judgment.
- (b) **Stay Pending the Disposition of a Motion.** On appropriate terms for the adverse party's security, the court may stay the execution of a judgment—or any proceedings to enforce it—pending disposition of any of the following motions:
- (1) under Rule 50, for judgment as a matter of law;
 - (2) under Rule 52(b), to amend the findings or for additional findings;
 - (3) under Rule 59, for a new trial or to alter or amend a judgment;
 - (4) under Rule 60(a) and (b), for relief from a judgment or order; or
 - (5) when justice so requires in other instances until such time as the court may fix.
- (c) **Stay by Bond or Other Security.** At any time after judgment is entered, a party may obtain a stay by supersedeas bond or other security as provided in Rule 7 of the Arizona Rules of Civil Appellate Procedure.
- (d) **Stay of an Injunction or Receivership.** Unless the court orders otherwise, an interlocutory or final judgment in an action for an injunction or receivership is not stayed after being entered, even if an appeal is taken.
- (e) **Injunction Pending an Appeal.** While an appeal is pending from an interlocutory order or final judgment that grants, continues, modifies, refuses, dissolves, or refuses to dissolve or modify an injunction, the court may suspend, modify, restore, or grant an injunction on such terms for bond, security, or otherwise that preserve the adverse party's rights.
- (f) **Stay of Judgment Ordering Execution of an Instrument or Sale of Perishable Property.**
- (1) ***Judgment Directing Execution of Instrument.*** If a party appeals a judgment or order directing the execution of a conveyance or other instrument, the judgment or order may not be stayed unless and until the conveyance or other instrument is executed and deposited with the clerk pending the outcome of the appeal.
 - (2) ***Judgment Directing Sale of Perishable Property and Distribution of Proceeds.*** A judgment or order directing the sale of perishable property may not be stayed pending appeal, but the proceeds of the sale must be deposited with the clerk pending the outcome of the appeal.

(g) Stay of a Judgment Against the State or Its Agencies or Political Subdivisions.

(1) ***Monetary Judgments.*** If a monetary judgment is entered against the State of Arizona or one of its agencies or political subdivisions, the judgment is automatically stayed upon the filing of an appeal.

(2) ***Nonmonetary Judgments.*** Subject to Rule 62(a), if a judgment other than a monetary judgment is entered against the State of Arizona or one of its agencies or political subdivisions, the judgment is not automatically stayed upon the filing of an appeal. If a court grants a stay of such a judgment, it may not require a bond, obligation, or other security.

(h) Stay of Judgment Entered Under Rule 54(b). A court may stay the enforcement of a final judgment entered under Rule 54(b) until it enters a later judgment or judgments, and may prescribe terms necessary to secure the benefit of the stayed judgment for the party in whose favor it was entered.

(i) Stay of a Judgment in Rem. If a claimant has filed a timely claim to the property and is not in default, a judgment in rem is not self-executing until 15 days after its entry, and no execution or other process may issue on the judgment during that time.

Rule 69. Execution; Postjudgment Discovery

- (a) **Generally.** A monetary judgment is enforced by a writ of execution, unless the court orders otherwise. A party may execute on a judgment—and seek relief in proceedings supplementary to and in aid of judgment or execution—as provided in these rules, statutory remedies, and other applicable law.
- (b) **Special Writ.** If a judgment is for personal property and the court finds that the property has a special value to the prevailing party, the court may award the prevailing party a special writ for the seizure and delivery of the specific property, in addition to any other relief provided in these rules and other applicable law.
- (c) **Discovery.**
- (1) **Generally.** Unless the court orders otherwise for good cause, no discovery may be served or taken during the 15-day automatic stay of enforcement of, or execution on, a judgment under Rule 62(a). If no further stay is ordered, after that 15-day period and in aid of the judgment or execution, the judgment creditor or a successor in interest whose interest appears of record may obtain discovery from any person—including the judgment debtor—as provided in these rules and other applicable law.
- (2) **After Stay of Judgment.** If enforcement of, or execution on, a judgment is stayed under Rule 7 of the Arizona Rules of Civil Appellate Procedure, or by other rule or court order, the court may allow discovery as provided in these rules and other applicable law if:
- (A) the amount of any supersedeas bond or other security posted does not cover the total amount of any monetary judgment, including costs, attorney’s fees, prejudgment interest, or punitive damages included in the judgment when entered; or
- (B) the discovery is necessary to protect the judgment creditor’s interest in the judgment during the pendency of post-trial motions or an appeal.
- (3) **Limitations.** The court may limit discovery under Rule 69(c)(2) to protect the party against whom the discovery is requested from undue burden or expense while the appeal is pending.