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

9 In the Matter of:

Supreme Court No. R-18-0017

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**

**REPLY OF THE**  
**STATE BAR OF ARIZONA**

16 Pursuant to Rule 28 of the Rules of the Arizona Supreme Court, the State Bar  
17 of Arizona (“State Bar”) submits this Reply to Comments received to its Petition to  
18 amend Rule 7 of the Arizona Rules of Civil Appellate Procedure (“ARCAP”) and  
19 Rules 62 and 69 of the Arizona Rules of Civil Procedure (“Ariz. R. Civ. P.”).

20 The State Bar received only two Comments to the Petition, and both of those  
21 supported the substance of the Petition. Indeed, the only formal Comment posted on  
22 the Court’s Rules Forum noted that “this amendment has been sorely needed ever  
23 since the statute was enacted.” The Comment urged the Court to further expand the  
24 Petition’s scope by adding “sanctions” and “anticipated post-judgment interest” to  
25

1 ARCAP 7(a)(4)(A) as items that must be included in the bond amount. A second,  
2 informal Comment was received, which expressed concern that the Proposal  
3 contained an ambiguity that potentially could allow a stay based on a supersedeas  
4 bond to remain in effect indefinitely, whether or not an appeal was pursued and even  
5 after an appeal was concluded.  
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7  
8 As explained more fully below, the State Bar supports modification of its  
9 proposal to clarify the identified ambiguity regarding the duration of a stay based on  
10 a supersedeas bond. The State Bar does not support further expansion of its proposal  
11 to add sanctions and anticipated post-judgment interest as items that must be  
12 included in the bond computation, however, for reasons explained below. The  
13 proposed clarifications to the Petition are reflected in the Amended Draft attached  
14 hereto as Appendix A in blackline and as Appendix B in a clean word version.  
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17 **I. THE STATE BAR PROPOSES FURTHER AMENDMENTS TO**  
18 **ARCAP 7 TO CLARIFY THE DURATION OF A STAY ON APPEAL.**  
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20 After the Petition was filed, the State Bar's General Counsel received an  
21 informal comment from the Chief Judge of the Arizona Court of Appeals, the  
22 Honorable Samuel Thumma. That comment expressed concern that the Petition's  
23 proposed deletion of the phrase "while an appeal is pending" from ARCAP 7(a)(1)  
24 potentially would allow a stay to remain in effect indefinitely, whether or not the  
25

1 judgment is appealed, and even after an appeal has concluded. (The Petition's  
2 original proposal to delete this phrase is shown in Appendix A to the Petition).

3  
4 The State Bar agrees that a change should be made to address this concern and  
5 to clarify that the duration of a stay based on a supersedeas bond should be  
6 coextensive with the duration of appeal proceedings. The original Petition proposed  
7 to delete the phrase "while an appeal is pending" from ARCAP 7 because, under the  
8 current rule and as proposed, a supersedeas bond may be obtained either before or  
9 after a notice of appeal is filed. This deletion also was intended to conform Arizona's  
10 rule to pending changes to Federal Rule 62, which similarly clarify that a bond may  
11 be obtained either before or after a notice of appeal is filed.  
12

13  
14 Unlike Arizona's rule, however, proposed Fed. R. Civ. P. 62(c) specifies the  
15 duration of the bond, providing that: "[t]he stay takes effect when the court approves  
16 the bond or other security and remains in effect for the time specified in the bond or  
17 other security." While the new federal rule language does not explicitly tie the bond  
18 duration to the appeal duration, presumably any specified end date would be tied to  
19 the appeal's duration.  
20

21  
22 The State Bar proposes the following amendments to clarify its proposal and  
23 to address the expressed concern:  
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1 (1) Adding language to ARCAP 7(a)(1)(A) providing that “a supersedeas  
2 bond is a bond filed in the superior court, as provided by this Rule and by applicable  
3 statutes, which stays enforcement of, or execution on, a judgment **as provided in**  
4 **this Rule.**” The proposed new language is in bold-faced type above, and is shown  
5 in the amended proposal at Appendix A (blackline) and Appendix B (clean word  
6 version). This amendment eliminates the phrase “while an appeal is pending,” and  
7 in conjunction with the proposed additions to ARCAP 7(b), below, clarifies that the  
8 duration of a supersedeas bond corresponds to the appeal duration.  
9  
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11 (2) Modifying ARCAP 7(b), as follows:

12 (a) Changing the subdivision heading to read: “Effect **and Duration** of a  
13 Stay.” The proposed new language is in bold-faced type above, and is shown  
14 in the amended proposal at Appendix A (blackline) and Appendix B (clean  
15 word version).  
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18 (b) Adding a sentence at the end of subdivision (b)(1) as follows: “**The stay**  
19 **takes effect when the court approves the supersedeas bond and remains**  
20 **in effect until issuance of the appellate court’s mandate, dismissal of the**  
21 **appeal, or as otherwise specified in the supersedeas bond or as ordered**  
22 **by the court.**” The proposed new language is in bold-faced type above, and  
23 is shown in the amended proposal at Appendix A (blackline) and Appendix B  
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1 (clean word version). This addition clarifies that the stay should only last for  
2 as long as the appeal proceedings last, while still allowing flexibility for the  
3 court to make more specific orders as appropriate for a particular case.  
4

5 **II. THE STATE BAR RECOMMENDS THAT THE COURT SHOULD**  
6 **NOT ADD SANCTIONS AND POST-JUDGMENT INTEREST AS**  
7 **ITEMS THAT MUST BE INCLUDED IN THE BOND AMOUNT.**

8 The sole formal Comment on the Court's Rules Forum supports the Petition,  
9 but proposes two expansions:  
10

11 (1) Adding "anticipated post-judgment interest accruing during the  
12 pendency of the appeal" as an item that the bond must cover, *see* March 2, 2018  
13 Comment of Eileen Dennis GilBride ("GilBride Comment"); and  
14

15 (2) Adding the word "sanctions" to ARCAP 7(a)(4)(A), to ensure that the  
16 successful party's right to collect sanctions is protected during appeal, *see* GilBride  
17 Comment.  
18

19 The State Bar recommends that the Court should not add the category of  
20 "anticipated post-judgment interest" to ARCAP 7(a)(4) as an item that must be  
21 included in the bond. The Petition already proposes to include "pre-judgment interest  
22 included in the judgment when entered," because that amount is part of the judgment  
23 and hence, is not subject to debate or speculation. In contrast, the amount of future  
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1 post-judgment interest that will accrue while an appeal is pending is not known at  
2 the time the bond amount is set, nor can it be projected with reasonable certainty.  
3 Adding post-judgment interest as a required component of the bond amount would  
4 both confuse the amount at issue, and give rise to disputes over the computation of  
5 projected future interest, wasting the resources of the court and the parties over an  
6 item that in many cases will be *de minimis*.  
7

8  
9 The State Bar also rejects as unnecessary adding “sanctions” as a separate  
10 category to be included in the bond. The GilBride Comment focuses principally on  
11 awards of attorney’s fees and costs as sanctions. But to the extent attorney’s fees or  
12 costs are awarded as sanctions, the proposed language in the pending Petition  
13 already covers an award of sanctions and permits their inclusion in the bond amount  
14 by including in ARCAP 7(a)(4) thus includes the “total amount of damages, **costs,**  
15 **attorney’s fees,** and prejudgment interest included in the judgment when entered,  
16 excluding punitive damages,” *see* Appendices A and B (emphasis supplied).  
17  
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19 To the extent that a sanctions award might go beyond an award of attorney’s  
20 fees and costs, however, broadening the scope of the Petition would potentially run  
21 afoul of the appeal bond statute. As discussed in the Petition, the statute (A.R.S. §12-  
22 2108) on which ARCAP 7 is based specifies that the bond should be the lower of the  
23 “total amount of damages awarded excluding punitive damages.” As the Petition  
24  
25

1 noted, it appears that the legislature used the terms “value of the judgment” and “total  
2 amount of damages” interchangeably, and did not intend to exclude attorney’s fees  
3 or other common elements of a judgment from the bond computation.<sup>1</sup> The  
4 amendments proposed in the Petition conform to legislative intent and should be  
5 adopted as proposed.  
6

7  
8 **CONCLUSION**

9 For the reasons discussed above, the State Bar respectfully requests that the  
10 Court adopt the changes in the Amended Draft attached hereto as Appendix A in  
11 blackline, and as Appendix B in a clean Word version, and that it not adopt the  
12 changes proposed in the GilBride Comment.  
13

14  
15 RESPECTFULLY SUBMITTED this 26<sup>th</sup> day of June, 2018.

16  
17   
18 Lisa M. Panahi  
General Counsel

19 Electronic copy filed with the  
20 Clerk of the Supreme Court of Arizona  
this 26<sup>th</sup> day of June, 2018.

21 by:   
22

23  
24 <sup>1</sup> This conclusion is reinforced by the fact that the Arizona Chamber of Commerce  
25 and Industry, which proposed the legislation that was enacted as Section 12-2108  
and is reflected in the current version of ARCAP 7, did not oppose the Petition’s  
proposed addition of these items to the bond amount.

## APPENDIX A—Blackline Version of Proposed Rules

### 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 as provided in this Rule. ~~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(eg) 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, 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 ~~an appellant~~ 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~~ 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~~ 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 and Duration of a Stay.**

(1) **Generally.** ~~If an appellant a 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. The stay takes effect when the court approves the supersedeas bond and remains in effect until issuance of the appellate court's mandate, dismissal of the appeal, or as otherwise specified in the supersedeas bond or ordered by the court.~~

(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 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 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 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.*** If 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 Word Version of Proposed Rules

### 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 provided in this Rule. 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, 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 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 and Duration 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. The stay takes effect when the court approves the supersedeas bond and remains in effect until issuance of the appellate court's mandate, dismissal of the appeal, or as otherwise specified in the supersedeas bond or ordered by the court.

(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 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.