

rors and defects that do not affect any party's substantial rights.

(As amended Apr. 30, 2007, eff. Dec. 1, 2007.)

NOTES OF ADVISORY COMMITTEE ON RULES—1937

A combination of U.S.C., Title 28, §§391 [see 2111] (New trials; harmless error) and [former] 777 (Defects of form; amendments) with modifications. See *McCandless v. United States*, 298 U.S. 342 (1936). Compare [former] Equity Rule 72 (Correction of Clerical Mistakes in Orders and Decrees); and last sentence of [former] Equity Rule 46 (Trial—Testimony Usually Taken in Open Court—Rulings on Objections to Evidence). For the last sentence see the last sentence of [former] Equity Rule 19 (Amendments Generally).

COMMITTEE NOTES ON RULES—2007 AMENDMENT

The language of Rule 61 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Rule 62. Stay of Proceedings to Enforce a Judgment

(a) AUTOMATIC STAY. Except as provided in Rule 62(c) and (d), execution on a judgment and proceedings to enforce it are stayed for 30 days after its entry, unless the court orders otherwise.

(b) STAY BY BOND OR OTHER SECURITY. At any time after judgment is entered, a party may obtain a stay by providing a bond or other security. The stay takes effect when the court approves the bond or other security and remains in effect for the time specified in the bond or other security.

(c) STAY OF AN INJUNCTION, RECEIVERSHIP, OR PATENT ACCOUNTING ORDER. Unless the court orders otherwise, the following are not stayed after being entered, even if an appeal is taken:

- (1) an interlocutory or final judgment in an action for an injunction or receivership; or
- (2) a judgment or order that directs an accounting in an action for patent infringement.

(d) 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 terms for bond or other terms that secure the opposing party's rights. If the judgment appealed from is rendered by a statutory three-judge district court, the order must be made either:

- (1) by that court sitting in open session; or
- (2) by the assent of all its judges, as evidenced by their signatures.

(e) STAY WITHOUT BOND ON AN APPEAL BY THE UNITED STATES, ITS OFFICERS, OR ITS AGENCIES. The court must not require a bond, obligation, or other security from the appellant when granting a stay on an appeal by the United States, its officers, or its agencies or on an appeal directed by a department of the federal government.

(f) STAY IN FAVOR OF A JUDGMENT DEBTOR UNDER STATE LAW. If a judgment is a lien on the judgment debtor's property under the law of the state where the court is located, the judgment debtor is entitled to the same stay of execution the state court would give.

(g) APPELLATE COURT'S POWER NOT LIMITED. This rule does not limit the power of the appellate court or one of its judges or justices:

- (1) to stay proceedings—or suspend, modify, restore, or grant an injunction—while an appeal is pending; or
- (2) to issue an order to preserve the status quo or the effectiveness of the judgment to be entered.

(h) STAY WITH MULTIPLE CLAIMS OR PARTIES. 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.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Dec. 29, 1948, eff. Oct. 20, 1949; Apr. 17, 1961, eff. July 19, 1961; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 2007, eff. Dec. 1, 2007; Mar. 26, 2009, eff. Dec. 1, 2009; Apr. 26, 2018, eff. Dec. 1, 2018.)

NOTES OF ADVISORY COMMITTEE ON RULES—1937

Note to Subdivision (a). The first sentence states the substance of the last sentence of U.S.C., Title 28, [former] §874 (Supersedeas). The remainder of the subdivision states the substance of the last clause of U.S.C., Title 28, [former] §227 (Appeals in proceedings for injunctions; receivers; and admiralty), and of [former] §227a (Appeals in suits in equity for infringement of letters patent for inventions; stay of proceedings for accounting), but extended to include final as well as interlocutory judgments.

Note to Subdivision (b). This modifies U.S.C., Title 28, [former] §840 (Executions; stay on conditions).

Note to Subdivision (c). Compare [former] Equity Rule 74 (Injunction Pending Appeal); and *Cumberland Telephone and Telegraph Co. v. Louisiana Public Service Commission*, 260 U.S. 212 (1922). See Simkins, *Federal Practice* (1934) §916 in regard to the effect of appeal on injunctions and the giving of bonds. See U.S.C., [former] Title 6 (Official and Penal Bonds) for bonds by surety companies. For statutes providing for a specially constituted district court of three judges, see:

U.S.C., Title 7:

§217 (Proceedings for suspension of orders of Secretary of Agriculture under Stockyards Act)—by reference.

§499k (Injunctions; application of injunction laws governing orders of Interstate Commerce Commission to orders of Secretary of Agriculture under Perishable Commodities Act)—by reference.

U.S.C., Title 15:

§28 (Antitrust laws; suits against monopolies expedited)

U.S.C., Title 28:

§47 [now 2325] (Injunctions as to orders of Interstate Commerce Commission, etc.)

§380 [now 2284] (Injunctions; alleged unconstitutionality of State statutes.)

§380a [now 2284] (Same; constitutionality of federal statute)

U.S.C., Title 49:

§44 [former] (Suits in equity under interstate commerce laws; expedition of suits)

Note to Subdivision (d). This modifies U.S.C., Title 28, [former] §874 (Supersedeas). See Rule 36(2), Rules of the Supreme Court of the United States, which governs supersedeas bonds on direct appeals to the Supreme Court, and Rule 73(d), of these rules, which governs supersedeas bonds on appeals to a circuit court of ap-

peals. The provisions governing supersedeas bonds in both kinds of appeals are substantially the same.

Note to Subdivision (e). This states the substance of U.S.C., Title 28, §870 [now 2408] (Bond; not required of the United States).

Note to Subdivision (f). This states the substance of U.S.C., Title 28, [former] §841 (Executions; stay of one term) with appropriate modification to conform to the provisions of Rule 6(c) as to terms of court.

NOTES OF ADVISORY COMMITTEE ON RULES—1946
AMENDMENT

Subdivision (a). [This subdivision not amended]. Sections 203 and 204 of the Soldiers' and Sailors' Civil Relief Act of 1940 ([former] 50 U.S.C. [App.] §501 *et seq.* §§523, 524] [now 50 U.S.C. §§3933, 3934]) provide under certain circumstances for the issuance and continuance of a stay of execution of any judgment or order entered against a person in military service. See *Bowsman v. Peterson* (D.Neb. 1942) 45 F.Supp. 741. Section 201 of the Act [50 U.S.C. §3931] permits under certain circumstances the issuance of a stay of any action or proceeding at any stage thereof, where either the plaintiff or defendant is a person in military service. See also Note to Rule 64 herein.

Subdivision (b). This change was necessary because of the proposed addition to Rule 59 of subdivision (e).

Subdivision (h). In proposing to revise Rule 54(b), the Committee thought it advisable to include a separate provision in Rule 62 for stay of enforcement of a final judgment in cases involving multiple claims.

NOTES OF ADVISORY COMMITTEE ON RULES—1948
AMENDMENT

Section 210 of the Judicial Code, as amended, U.S.C., Title 28, §47a, is repealed by revised Title 28 and its provisions that stays pending appeals to the Supreme Court in Interstate Commerce Commission cases may be granted only by that court or a justice thereof are not included in revised Title 28. Prior to this repeal the additional general reference in subdivision (g) to "other statutes of the United States", was needed as a safety residual provision due to the specific reference to Section 210 of the Judicial Code. With the repeal of this latter section there is no need for the residual provision, which has no present applicability; and to the extent that any statute is enacted providing "that stays pending appeals to the Supreme Court may be granted only by that court or a justice thereof" it will govern and will not be inconsistent or repugnant to subdivision (g) as amended.

NOTES OF ADVISORY COMMITTEE ON RULES—1961
AMENDMENT

These changes conform to the amendment of Rule 54(b).

NOTES OF ADVISORY COMMITTEE ON RULES—1987
AMENDMENT

The amendment is technical. No substantive change is intended.

COMMITTEE NOTES ON RULES—2007 AMENDMENT

The language of Rule 62 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

The final sentence of former Rule 62(a) referred to Rule 62(c). It is deleted as an unnecessary [sic]. Rule 62(c) governs of its own force.

COMMITTEE NOTES ON RULES—2009 AMENDMENT

The time set in the former rule at 10 days has been revised to 14 days. See the Note to Rule 6.

COMMITTEE NOTES ON RULES—2018 AMENDMENT

Subdivisions (a), (b), (c), and (d) of former Rule 62 are reorganized and the provisions for staying a judgment are revised.

The provisions for staying an injunction, receivership, or order for a patent accounting are reorganized by consolidating them in new subdivisions (c) and (d). There is no change in meaning. The language is revised to include all of the words used in 28 U.S.C. §1292(a)(1) to describe the right to appeal from interlocutory actions with respect to an injunction, but subdivisions (c) and (d) apply both to interlocutory injunction orders and to final judgments that grant, refuse, or otherwise deal with an injunction.

New Rule 62(a) extends the period of the automatic stay to 30 days. Former Rule 62(a) set the period at 14 days, while former Rule 62(b) provided for a court-ordered stay "pending disposition of" motions under Rules 50, 52, 59, and 60. The time for making motions under Rules 50, 52, and 59, however, was later extended to 28 days, leaving an apparent gap between expiration of the automatic stay and any of those motions (or a Rule 60 motion) made more than 14 days after entry of judgment. The revised rule eliminates any need to rely on inherent power to issue a stay during this period. Setting the period at 30 days coincides with the time for filing most appeals in civil actions, providing a would-be appellant the full period of appeal time to arrange a stay by other means. A 30-day automatic stay also suffices in cases governed by a 60-day appeal period.

Amended Rule 62(a) expressly recognizes the court's authority to dissolve the automatic stay or supersede it by a court-ordered stay. One reason for dissolving the automatic stay may be a risk that the judgment debtor's assets will be dissipated. Similarly, it may be important to allow immediate enforcement of a judgment that does not involve a payment of money. The court may address the risks of immediate execution by ordering dissolution of the stay only on condition that security be posted by the judgment creditor. Rather than dissolve the stay, the court may choose to supersede it by ordering a stay that lasts longer or requires security.

Subdivision 62(b) carries forward in modified form the supersedeas bond provisions of former Rule 62(d). A stay may be obtained under subdivision (b) at any time after judgment is entered. Thus a stay may be obtained before the automatic stay has expired, or after the automatic stay has been lifted by the court. The new rule's text makes explicit the opportunity to post security in a form other than a bond. The stay takes effect when the court approves the bond or other security and remains in effect for the time specified in the bond or security—a party may find it convenient to arrange a single bond or other security that persists through completion of post-judgment proceedings in the trial court and on through completion of all proceedings on appeal by issuance of the appellate mandate. This provision does not supersede the opportunity for a stay under 28 U.S.C. §2101(f) pending review by the Supreme Court on certiorari. Finally, subdivision (b) changes the provision in former subdivision (d) that "an appellant" may obtain a stay. Under new subdivision (b), "a party" may obtain a stay. For example, a party may wish to secure a stay pending disposition of post-judgment proceedings after expiration of the automatic stay, not yet knowing whether it will want to appeal.

Rule 62.1. Indicative Ruling on a Motion for Relief That is Barred by a Pending Appeal

(a) **RELIEF PENDING APPEAL.** If a timely motion is made for relief that the court lacks authority to grant because of an appeal that has been docketed and is pending, the court may:

- (1) defer considering the motion;
- (2) deny the motion; or
- (3) state either that it would grant the motion if the court of appeals remands for that purpose or that the motion raises a substantial issue.

(b) **NOTICE TO THE COURT OF APPEALS.** The movant must promptly notify the circuit clerk