

89-R-99001

FILED

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI DEC 06 2019

IN RE: AMENDMENT OF M.R.C.P. 62

OFFICE OF THE CLERK  
SUPREME COURT  
COURT OF APPEALS

MOTION TO AMEND M.R.C.P. 62

Comes now the Supreme Court Advisory Committee on Rules, pursuant to M.R.A.P. 27(f), and moves the Mississippi Supreme Court to amend M.R.C.P. 62 as discussed below. The current rule automatically stays proceedings to enforce a judgment for ten days after entry of judgment, and if a motion for new trial is filed, the rule stays enforcement proceedings through the tenth day after the disposition of the motion for new trial. The rule does not extend the automatic stay pending resolution of other post-trial motions such as a motion for judgment notwithstanding the verdict made pursuant to M.R.C.P. 50(b), a motion to alter or amend the judgment made pursuant to M.R.C.P. 59(e), or a motion for amendment to the findings or for additional findings made pursuant to M.R.C.P. 52(b). The Committee determined that stays pending resolution of post-trial motions should be consistent. The Committee also determined that an automatic stay pending resolution of post-trial motions without security might not adequately protect the prevailing party's interest in some circumstances. Thus, the Committee determined to extend the automatic stay for a period of thirty days after entry of judgment. If a timely post-trial motion or motions are filed, the party filing the post-trial motion may move the court for a stay beyond the initial automatic thirty-day stay. The trial court would have discretion to extend the stay and to require appropriate security.

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**Rule 62. Stay of Proceedings to Enforce A Judgment**

**(a) Automatic Stay; Exceptions.** Except as stated herein or as otherwise provided by statute or by order of the court for good cause shown, no execution shall be issued upon a judgment nor shall proceedings be taken for its enforcement until the expiration of ~~ten~~ thirty days after the ~~later of its entry or the disposition of a motion for a new trial.~~ Unless otherwise ordered by the

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court, an interlocutory or final judgment in an action for an injunction or in a receivership action shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal. The provisions of subdivision (c) of this rule govern the suspending, modifying, restoring, or granting of an injunction during the pendency of an appeal.

**(b) Stay on Motion.** Upon a motion, the court may, in its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of or any proceedings to enforce a judgment pending the disposition of: (i) a motion for new trial pursuant to Rule 59; (ii) a motion to alter or amend a judgment made pursuant to Rule 59(e); or of ; (iii) a motion for relief from a judgment or order made pursuant to Rule 60(b), or of ; (iv) a motion to set aside a verdict for judgment notwithstanding the verdict made pursuant to Rule 50(b); or of (v) a motion for amendment to the findings or for additional findings made pursuant to Rule 52(b).

**(c) Injunction Pending Appeal.** When an interlocutory or final judgment has been rendered granting, dissolving, or denying an injunction, the court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of an appeal from such judgment upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party. The power of the court to make such an order is not terminated by the taking of the appeal.

**(d) Stay Upon Appeal.** When an appeal is taken, the appellant, when and as authorized by statute or otherwise, may obtain a stay subject to the exceptions contained in subdivision (a) of this rule.

**(e) [Omitted].**

**(f) Stay in Favor of the State of Mississippi or Agency Thereof.** When an appeal is taken by the State of Mississippi or an officer or agency thereof or by direction of any department of the government of same and the operation or enforcement of the judgment is stayed, no bond, obligation, or other security shall be required of the appellant.

**(g) Power of Appellate Court Not Limited.** The provisions in this rule do not limit any power of an appellate court or of a judge or justice thereof to stay proceedings during the pendency of an appeal or to suspend, modify, restore, or grant an injunction during the pendency of an appeal or to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered.

**(h) Stay of Judgment Upon Multiple Claims or as to Multiple Parties.** When a court has ordered a final judgment under the conditions stated in Rule 54(b), the court may stay enforcement of that judgment until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.

[Amended effective July 1, 1997; amended effective \_\_\_\_\_.]

**Advisory Committee Historical Note**

Effective \_\_\_\_\_, Rule 62(a) and (b) were amended to require a motion to stay execution upon a judgment pending resolution of a motion for new trial. Prior to amendment, the rule required a motion to stay execution pending the resolution of post-trial motions other than a motion for new trial but did not require a motion to stay pending resolution of a motion for new trial.

*Effective July 1, 1997, Rule 62(a) was amended to clarify that the stay of enforcement of a judgment expires ten days after the later of the entry of the judgment or the disposition of a motion for a new trial, and Rule 62(b) was amended to state that a court may stay the execution of or any proceedings to enforce a judgment pending the disposition of a motion to set aside a verdict made pursuant to Rule 50(b). 689-692 So. 2d XLIX (West Miss. Cas. 1997).*

**Advisory Committee Notes**

M.R.A.P. 8 governs stays or injunctions pending appeal. In addition, M.C.A. § 11-51-31 governs appeal bonds in civil litigation.

*Subdivision (e) of the Federal Rules applies to stays in favor of the United States; it is omitted from the Mississippi Rules of Civil Procedure.*

[Advisory Committee Note adopted effective July 1, 2014; amended effective \_\_\_\_\_.]

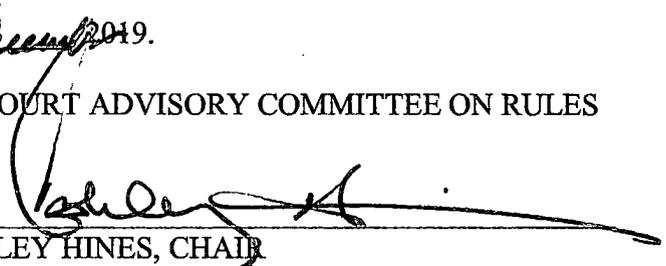
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The proposed amendment to M.R.C.P. 62 is generally consistent with F.R.C.P. 62 which provides for an automatic thirty-day stay of proceedings to enforce a judgment and also authorizes a party to move for an additional stay upon providing a bond or other security. The motion to amend M.R.C.P. 62 was unanimously approved by the Committee on November 1, 2019.

The Supreme Court Advisory Committee on Rules therefore moves that the above proposed amendment to M.R.C.P. 62 be considered by the Mississippi Supreme Court.

SO MOVED, this the <sup>6</sup>6 day of December 2019.

SUPREME COURT ADVISORY COMMITTEE ON RULES



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