

Alabama Rules of Appellate Procedure

Rule 8.

Stay or injunction pending appeal.

(a) *Stay by supersedeas bond.* The appellant shall not be entitled to a stay of execution of the judgment pending appeal (except as provided in Rule 62(e), Ala.R.Civ.P.) unless the appellant executes bond with good and sufficient sureties, approved by the clerk of the trial court, payable to the appellee (or to the clerk or register if the trial court so directs), with condition, failing the appeal, to satisfy such judgment as the appellate court may render, when the judgment is:

(1) For the payment of money only, in an amount equal to 150% of the amount of the judgment if the judgment does not exceed \$10,000.00, or 125% if the judgment exceeds \$10,000.00;

(2) For the payment of money and also for the performance of some other act or duty, or for the recovery or sale of property or the possession thereof, in such sum, in addition to the sum required for money judgments only in (1) above, as the trial court may in writing prescribe; or if appellant wishes to supersede the judgment as to the payment of money only, the requirements of (1) above shall apply;

(3) Only for the performance of some act or duty, or for the recovery or sale of property or the possession thereof (or if the judgment includes the payment of money and the appellant does not wish to supersede the judgment in that respect), in such sum as the trial court may in writing prescribe.

The approval of the supersedeas bond by the clerk of the trial court, unless contested by the opposing party, shall constitute a stay of the judgment when the judgment is for the payment of money only, or the payment of money and some other act and the appellant wishes to supersede the judgment as to the payment of money only. In the event the clerk declines to approve the bond, or the clerk's approval is contested, the requirements of (b) below shall apply.

(b) *Stay must ordinarily be sought in the first instance in trial court; motion for stay in appellate court.* In a civil action, application for a stay of the judgment or order of a trial court pending appeal, or for approval of a supersedeas bond, or for an order suspending, modifying, restoring or granting an injunction during the pendency of an appeal must ordinarily be made in the first instance in the trial court. A motion for such relief may be made to the appellate court in which the appeal is pending, but the motion shall show that application to the trial court for the relief sought is not practicable, or that the trial court has denied an application, or has failed to afford the relief which the applicant requested, with the reasons given by the trial court for its action. The motion shall also show the

reasons for the relief requested and the facts relied upon, and if the facts are subject to dispute the motion shall be supported by affidavits or other sworn statements or copies thereof. With the motion shall be filed such photocopied parts of the record as are relevant. Reasonable notice of the motion shall be given to all parties. The motion shall be filed with the clerk of the appellate court.

When the judgment or order of a trial court is for the payment of money only, the filing and approval of a supersedeas bond conditioned as required by law shall operate to stay and suspend the execution of such judgment or order. The action of the clerk of the trial court in either approving or refusing to approve a supersedeas bond shall be subject to review by the trial court.

(c) *Stay may be conditioned upon giving of bond; proceeding against principals and sureties.* Relief available in the appellate court under this rule may be conditioned upon the filing of a bond or other appropriate security in the trial court. If security is given in the form of a bond or other undertaking with one or more sureties, each principal and each surety, jointly and severally, submit themselves to the jurisdiction of the trial court and irrevocably appoint the clerk of the trial court as their agent upon whom any papers affecting their liability on the bond or undertaking may be served. Their liability may be enforced on motion in the trial court without the necessity of an independent action. The motion and such notice of the motion as the trial court prescribes may be served on the clerk of the trial court, who shall forthwith mail copies to each principal and each surety if their addresses are known.

(d) *Stays in criminal cases.*

(1) DEATH. When pronouncing a sentence of death, the trial court shall not set an execution date, but it may make such orders concerning the transfer of the inmate to the prison system as are necessary and proper. The supreme court shall at the appropriate time enter an order fixing a date of execution, not less than 30 days from the date of the order, and it may make other appropriate orders upon disposition of the appeal or other review. The supreme court order fixing the execution date shall constitute the execution warrant.

(2) IMPRISONMENT. A sentence of imprisonment or hard labor for the county or to the penitentiary shall be stayed if an appeal is taken and the defendant elects not to commence service of the sentence or is admitted to bail.

(3) FINES. A sentence to pay a fine or a fine and costs, if an appeal is taken, may be stayed by the trial court or by the appellate court upon such terms as the court deems proper. The court may require the defendant pending appeal to deposit the whole or any part of the fine and costs with the clerk of the court, or to give bond for the payment thereof, or to submit to an examination of assets, and it may make any appropriate order to restrain the defendant from dissipating assets.

(4) PROBATION. An order placing the defendant on probation shall be stayed if an appeal from a judgment of conviction is taken, and the time while such appeal is pending shall not be credited as service of the probationary sentence.

[Amended 2-4-85; Amended 11-19-96, eff. 1-1-97.]

Committee Comments

Subdivision (a) provides for the stay of execution of a judgment pending appeal in three situations: (1) for payment of money only, (2) for payment of money and performance of some other act or duty and (3) for performance of some act or duty other than for payment of money. In so providing, it supersedes Title 7, §§ 793, 794 and 795, while preserving the exceptions provided in Title 7, § 799 (married woman exemption) and ARCP Rule 62(e) (State of Alabama exemption).

Subdivision (a) basically restates Title 7, §§ 793, 794 and 795. It modifies a previous statutory requirement as to the amount of the supersedeas bond required where the judgment is for the payment of money only or for the payment of money and for the performance of some other act and the appellant wishes to supersede the judgment as to the portion of the judgment for money only.

The remainder of Rule 8 sets forth substantially the provisions of FRAP Rule 8, but the provisions dealing with civil and criminal actions are specifically separated to deal with the state's circumstances.

Rule 8 makes specific the case law rule that the principal as well as the surety is subject to summary proceedings on a bond given under this rule or under Rule 7. In this connection, see 9 Moore's Federal Practice 1308 (2nd Ed.). By specific reference, bonds given under Rule 7 are made subject to this summary enforcement.

Subdivision (d) is based both on prior state practice and on Rule 8(d) of the Federal Rules of Criminal Procedure (FRCrimP).

See Committee Comment on death sentences. Rule 39(c).

See ARCP Rule 62, for companion provisions.

Committee Comments to Amendment to Rule 8(d)(1), Effective February 4, 1985

Subdivision (d)(1) supersedes Code of Alabama 1975, § 12-22-243; § 15-18-80; that clause in § 15-18-82(a) reading "not less than 30 nor more than 100

days from the date of sentence, as the court may adjudge,"; the second and third sentences of § 15-18-84(a); and the second and third sentences of § 15-18-84(b). It is based on the recognition that appeal is automatic in death penalty cases, see § 12-22-150, § 13A-5-55, and Rule 39(c), A.R.A.P., and that the supreme court is in the best position to set an execution date and enter any necessary stays. In the limited circumstances described in § 15-16-23, the trial court has the authority to stay and reset the execution date, and in such a case the trial court's order resetting the date would constitute the execution warrant.

**Court Comment to Amendments to Rules 8(a) and 8(d)(3)
Effective January 1, 1997**

The amendments to Rules 8(a) and 8(d)(3) remove gender specific pronouns.

**Committee Comments to Rule 8(a) and (b),
Adopted January 12, 2005**

In *Ex parte Spriggs Enterprises, Inc.*, 376 So. 2d 1088, 1089 (Ala. 1979), the Alabama Supreme Court held that "[t]he plain meaning of Rule 8(a)(1) is that one who appeals a judgment against him for money damages only must execute a supersedeas bond in an amount equal to 125% of the amount of the judgment when the judgment exceeds \$10,000. The language utilized in the rule is mandatory; the trial judge is given no discretion in setting the amount of the supersedeas bond." Note, however, that the Supreme Court has recognized, for good cause shown (set forth as grounds for a motion filed by the appellant) and pursuant to Rule 8(b) and Rule 2, the need to suspend the requirements of Rule 8(a) in extraordinary circumstances and to direct the trial court to accept a bond in an amount other than that required by Rule 8(a). For example, on December 29, 2003, in case no. 1030488, *Ware v. Timmons*, in response to a motion to suspend the requirement of Rule 8(a)(1), the Alabama Supreme Court issued an order, providing, in pertinent part:

"It is ordered that the appellants are required to post with the trial court the maximum bond obtainable, based on the appellants' entire net worth and available insurance coverage, to be determined by the trial court, within 14 days from the date of this order."