

Alabama Rules of Civil Procedure

VII. JUDGMENT

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 issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of thirty (30) days after its entry. Unless otherwise ordered by the 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 for new trial or for judgment.* 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 a motion for a new trial or to alter, amend, or vacate a judgment made pursuant to Rule 59, or of a motion for relief from a judgment or order made pursuant to Rule 60, or of a motion for judgment in accordance with a motion for judgment as a matter of law made pursuant to Rule 50, or of 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 by giving a supersedeas bond may obtain a stay subject to the exceptions contained in subdivision (a) of this rule. The bond may be given at or after the time of filing the notice of appeal or of procuring the order allowing the appeal, as the case may be. The stay is effective when the supersedeas bond is approved by the court.

(e) *Stay in favor of the State of Alabama or agency thereof.* When an appeal is taken by the State of Alabama or an officer or agency thereof or by direction of any department of the government of the State of Alabama and the operation or enforcement of the judgment is stayed, no bond, obligation or other security shall be required from the appellant.

(f) [Omitted.]

(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.

(dc) *District court rule.* Rule 62 applies in the district courts except that (1) the references therein to injunctions and receivership actions are deleted, (2) the time period of thirty (30) days in Rule 62(a) is reduced to fourteen (14) days except in an eviction action as defined in §35-9A-141(5), Ala. Code 1975, in which action the time period is reduced to seven (7) calendar days, (3) provisions of Rule 62(b) are modified so as to provide for an automatic stay of execution pending a ruling on any motion for a new trial or to alter or amend a judgment or for amendment to the findings or for additional findings, (4) Rule 62(c) does not apply in the district courts, and (5) the provision for a supersedeas bond in Rule 62(d) is deleted and Rule 62(d) is modified so as to require only a bond for costs or an affidavit of substantial hardship, approved by the court, in lieu of said bond.

[Amended eff. 10-1-95; Amended eff. 11-28-2012.]

Committee Comments on 1973 Adoption

The automatic stay, provided by subdivision (a), is intended to give the party time to prepare for appeal or to attack the judgment by motion before

enforcement of the judgment is had. 7 Moore's *Federal Practice* § 62.03 (2d ed. 1971). Since the time to make motions attacking the judgment is 30 days in these rules, rather than 10 days as in the Federal Rules — see Rules 50(b), 52(b), 59 and 60 — the automatic stay here provided is for 30 days rather than 10 days. The stay only prevents enforcement of the judgment; it does not affect appealability of the judgment nor prevent the time for appeal from running. The phrase “or as otherwise provided by statute,” which does not appear in the Federal Rule, has been added to the first sentence of subdivision (a) in order to permit execution prior to the expiration of 30 days where permitted by such statutes as Code of Ala., §§ 6-9-22 and 6-9-23.

A court has inherent power to make whatever order it deems necessary to preserve the status quo and ensure the effectiveness of the eventual judgment. *Shinholt v. Angle*, 90 F.2d 297 (5th Cir.1937), but Federal Rule 62(c), intended to partially codify the power, is not entirely clear. Subdivision (c) has here been altered to incorporate the construction placed on the Federal Rule in *United States v. El-O-Pathic Pharmacy*, 192 F.2d 62 (9th Cir.1954), that the trial court retains power to make an order under this subdivision despite the fact that an appeal has been taken. 3 Barron & Holtzoff, *Federal Practice and Procedure* § 1373 (1958); Wright's *Minnesota Rules* 358-360 (1954).

Subdivision (d), permitting a stay upon appeal by the giving of a supersedeas bond, incorporates a familiar Alabama practice. Code 1940, Tit. 7, § 793, et seq. The rule is supplemented by subdivision (e), which permits a stay without giving of a bond where appeal is taken by the State of Alabama or an agency thereof, and by Code 1940, Tit. 7, § 799, which dispenses with a bond under certain stated circumstances where a married woman appeals.

Federal Rule 62(f) provides for a stay according to state law. There is no need for such a provision in rules adopted by a state, and the subdivision is here omitted.

The Alabama Supreme Court, or a justice thereof, has inherent power to hold the subject matter of litigation in status quo pending disposition of an appeal. *Piccolo v. Piccolo*, 251 Ala. 483, 38 So.2d 12 (1948). This power is recognized by subdivision (g).

Subdivision (h) supplements Rule 54(b). Under that rule the court can, in a proper case, direct entry of a final judgment as to less than all of the parties or claims involved in an action. Such judgment is final for purposes of appeal. Under this rule the court can stay enforcement of such conditions as to a stay as are necessary.

**Committee Comments to October 1, 1995,
Amendment to Rule 62**

The amendment is technical. No substantive change is intended.

**Committee Comments to Amendment to Rule 62(dc)
Effective November 28, 2012**

This amendment to the (dc) provision regarding Rule 62(a) is in accordance with a 2011 amendment to the Alabama Uniform Residential Landlord and Tenant Act, specifically Ala. Code 1975, §35-9A-461(e), which states that in eviction actions, "[n]otwithstanding Rule 62 of the Alabama Rules of Civil Procedure, the automatic stay on the issuance of the writ of possession or restitution shall be for a period of seven days." This rule change applies only to eviction actions for residential property under the Alabama Uniform Residential Landlord and Tenant Act and is not applicable to possessory actions for unlawful detainer brought under Ala. Code 1975, §6-6-310(2).

District Court Committee Comments

For commentary as to the unavailability of injunctive relief and receiverships in the district courts, see the District Court Committee Comments to Rule 65 and Rule 66, respectively. Unlike the practice in the circuit court, the mere filing of a motion for a new trial or a motion to alter or amend a judgment or a motion for an amendment to findings or for additional findings automatically stays execution pending a ruling on the motion. The shortened time periods applicable to post-trial motions in the district court make such a rule workable without risk of substantial injustice. In cases of extreme hardship, provision is made for an order for immediate execution notwithstanding the pendency of a post-trial motion. The provision for a supersedeas bond in Rule 62(d) poses grave questions as to constitutionality in view of the absence of a right to a trial by jury as a predicate for a district court judgment. Accordingly, the Advisory Committee has recommended deletion of the provision for a supersedeas bond in the district courts. Provision is made for relief from the obligation to post a bond as security for costs in case of substantial hardship and the language chosen by the Committee parallels that used with respect to the subject of relief from the obligation to post costs as is found in Sec. 16-110 of the Judicial Article Implementation Act. Of course, the costs referred to herein relate to costs incurred in the district court since the payment of a new filing fee in the circuit court is necessary in order to prosecute de novo review in that court.

Note from the reporter of decisions: The order amending, effective November 28, 2012, Rule 6(dc), Rule 12(dc), Rule 52(dc), Rule 55(dc), Rule 59(dc), and Rule 62(dc), and adopting the Committee Comments to the Amendment to Rule 6(dc) Effective November 28, 2012, the Committee Comments to the Amendment to Rule 12(dc) Effective November 28, 2012, the Committee Comments to the Amendment to Rule 52(dc) Effective November 28, 2012, the Committee Comments to the Amendment to Rule 55(dc) Effective November 28, 2012, the Committee Comments to the Amendment to Rule 59(dc) Effective November 28, 2012, and the Committee Comments to the Amendment to Rule 62(dc) Effective November 28, 2012, is published in that volume of *Alabama Reporter* that contains Alabama cases from ___ So. 3d.