

**RISSMAN, BARRETT, HURT,
DONAHUE & McLAIN, P. A.
ATTORNEYS AT LAW**

STEVEN A. RISSMAN
ROBERT C. BARRETT
JENNINGS L. HURT III
ROBERT A. DONAHUE
JOHN E. McLAIN III
RICHARD S. WOMBLE
STACIE B. GREENE
THEODORE N. GOLDSTEIN
RAYMOND A. LOPEZ
VANCE R. DAWSON
RICHARD B. MANGAN JR.
HENRY W. JEWETT II
DANIEL M. POLLACK
ART C. YOUNG
NICOLE D. RUOCCO
DANIEL T. JAFFE
BEATRIZ E. JUSTIN
J. GREGORY GIANNUZZI
DAVID K. BEACH
F. DEAN HEWITT
EDWARD M. COPELAND IV
DAVID R. KUHN
G. WILLIAM LAZENBY IV
R. CLIFTON ACORD II
ROBERT D. BARTELS
JILL M. SPEARS
JEFFREY J. KERLEY
KARISSA L. OWENS

OF COUNSEL
ROBERT J. JACK
JOHN P. DALY

EXECUTIVE DIRECTOR
W. SCOTT PETERSON

201 EAST PINE STREET
15TH FLOOR
P.O. BOX 4940
ORLANDO, FLORIDA 32802-4940
TELEPHONE (407) 839-0120
TELECOPIER (407) 841-9726
ORLANDO@RISSMAN.COM

TAMPA COMMONS
ONE NORTH DALE MABRY HIGHWAY
11TH FLOOR
TAMPA, FLORIDA 33609
TELEPHONE (813) 221-3114
TELECOPIER (813) 221-3033
TAMPA@RISSMAN.COM

709 SEBASTIAN BOULEVARD
SUITE B
SEBASTIAN, FLORIDA 32958
TELEPHONE (772) 228-3228
TELECOPIER (772) 228-3229
SEBASTIAN@RISSMAN.COM

WWW.RISSMAN.COM

PLEASE REPLY TO: ORLANDO

AMY L. BAKER
AMANDA L. BRUS
STEVEN B. BURRES
DEREK J. BUSH
SEAN M. CROCKER
CHRISTOPHER E. DENNIS
SARAH E. EGAN
JAMES E. FAVERO III
SUSAN R. FULLER
PAUL B. FULMER
JANNINE C. GALVEZ
ELISE J. GEIBEL
CHRISTOPHER A. HANSON
VICTORIA S. LUNA
LAURA F. LYTLE
ERIC F. OCHOTORENA
JEREMY T. PALMA
JEFFREY M. PATNEAUDE
MEGHAN C. REDDY
D. BLAKE REHBERG
KELLEY A. RICHARDS
RICHARD B. ROBBINS
JUAN A. RUIZ
GREG R. SCHMITZ
BRYAN R. SNYDER
LARRY D. SPENCER
MEREDITH M. STEPHENS
ELIZABETH M. STUART
F. PAUL TIPTON
NICOLETTE E. TSAMBIS
JASON R. URBANOWICZ
CHRISTINE V. ZHAROVA

February 9, 2012

STAY OF JUDGMENTS AND PROCEEDINGS IN FLORIDA STATE COURTS

When a judgment has been entered against a party in Florida courts there are several options to prevent execution of that judgment by moving to secure a stay. The stay is a tool courts use to manage litigation and protect the rights of the parties during appeals.

In order to determine a party's options after an order of final judgment has been entered against that party, the first place to look is Florida Rule of Appellate Procedure 9.310. This rule controls proceedings in the Florida Supreme Court and district courts of appeal, "notwithstanding any conflicting rules or procedures." Rule 9.310 applies only to orders that are appealed, and stays of orders that are not appealable are not controlled by this Rule.

Rule 9.310 indicates that any parties seeking to stay a final or a non-final order pending review must file a motion in the trial court. The trial court has continuing jurisdiction and broad discretion to grant, modify or deny such relief. The rule continues by noting that the stay may be conditioned on the posting of a good and sufficient bond, other conditions or both.

Stay of Judgments and Proceedings in Florida State Courts

February 9, 2012

Page 2

Noteworthy is that the trial court cannot require an appellant to file a sufficient bond as a precondition of the appeal itself, as the right to that appeal is guaranteed by the state constitution. Rule 9.310 also gives the appellate court the power to review the trial court's stay order when an appeal has been commenced.

All orders that are subject to appellate review are subject to Rule 9.310. This includes final orders, non-final orders enumerated in Florida Rule 9.310, and also orders reviewable by way of petition for writ of certiorari, prohibition or mandamus.

If a stay is required while the appellate court reviews the trial court's order, a motion for stay should be filed with the trial court. The trial court's order or judgment is not stayed by merely filing a notice of appeal or petition for writ of certiorari. The granting of a stay pending appeal is within the trial court's discretion.

While Rule 9.310 requires the filing of a motion, if a trial court grants an order against a party, and the order would cause substantial, irreparable injury to that party, an **ore tenus** motion for a stay would be appropriate. A better practice would be to file a conditional motion for stay prior to a hearing that might result in an order that would be appealed. It is important to perfect a party's right to apply to the appellate court for a stay should the trial court deny a motion for stay, by getting a ruling on the motion for stay, and a written order.

When drafting a motion for stay, the trial court would be more likely to grant the request if the conditions in the proposed motion state that the stay would not harm the opposing party and would not unduly delay the proceedings. Certain conditions that may be considered reasonable are filing the notice of appeal or petition promptly, allowing other aspects of litigation to proceed unabated, and/or protecting property, documents or evidence to prevent spoliation.

To obtain a stay from the appellate court, it must be demonstrated that the appealing party will likely prevail on appeal and, if a stay is not granted, that the party would suffer a substantial injury.

Stay of Judgments and Proceedings in Florida State Courts

February 9, 2012

Page 3

A checklist for the motion to stay includes:

- informing the trial court that it has the power to stay the order pursuant to Rule 9.310;
- notice to the trial court that the party intends to file a notice of appeal and the date the party intends to file it;
- a summary of the legal and factual grounds for the appeal;
- a discussion of the harm that would befall the appealing party should the stay not be granted;
- evidentiary support to justify the stay;
- a discussion of the effect of the stay on the progress of the case, and proposals to keep other parts of the case moving forward; and
- a demonstration that the stay would not harm the opposing party.

Should the trial court deny the motion for a stay, the next course of action should be to file a motion for a stay in the appellate action. Note, however, the appealing party must first apply to the trial court for a stay. The appellate court will review the trial court's order for an abuse of discretion.

The motion for a stay should be filed in the appellate court as soon as possible, and the appellate court will need to see the trial court motion, the order denying that motion, a statement of the facts, a discussion of the course of the proceedings, the legal question that is under review, showing that the movant would likely succeed on the merits of the appeal and the harm would result to the moving party should the stay not be granted. Note that an appellate court cannot consider a motion if no appellate case has been commenced, so a motion for a stay must

Stay of Judgments and Proceedings in Florida State Courts

February 9, 2012

Page 4

coincide with, or be filed subsequent to, a notice of appeal or the filing of a petition.

Typically speaking, the stay will remain in effect until the conclusion of all appellate proceedings. Appellate proceedings conclude when the appellate court issues its mandate. If the intent is to appeal to the Florida Supreme Court, then it must be weighed whether to ask the appellate court to withhold issuance of its mandate until the Supreme Court makes its decision on the appeal. Further, the trial court may be asked to issue a new stay pending the Supreme Court proceedings.

The trial court may stay any of its interlocutory orders, even if they are not appealable. This power of the trial court is inherent in the trial court's ability to manage the case, and it is not established by Rule 9.310. The trial court's decision stems from the trial court's own broad discretion.

In the event the trial court grants a stay against the opposing party, that party may seek appellate review of that stay, but the jurisdiction of the appellate court is not established by Rule 9.310, but rather by a petition for writ of certiorari. In order to have the appellate court grant the appeal of the stay, it must be established that the order departs from the essential requirements of law and causes a serious, irreparable injury to the appealing party.

If the judgment is solely for the payment of money, the trial court has the discretionary ability stay an execution on money judgments by showing "good cause" as set forth by Florida Rule of Civil Procedure 1.550(a). An automatic stay of a money judgment can be obtained under Florida Rule of Appellate Procedure 9.310(b), by filing a good and sufficient bond, issued by a surety company authorized to do so in Florida. The amount of this bond is set forth in the rule and requires the bond be for the principal amount of the judgment, plus two years of interest calculated at the statutory rate. Rule 9.310 allows the State, or a public officer, to obtain a stay without a bond in most circumstances.

A bond, pursuant to Rule 9.310 is one that is issued by an insured authorized by the Office of Insurance Regulation to do so

Stay of Judgments and Proceedings in Florida State Courts

February 9, 2012

Page 5

in Florida. A proper bond will contain the identity of the surety, the principal, and the judgment, who is the obligee. This bond is signed by both the principal and the surety, and the original bond is to be filed with the trial court under a notice of filing bond.

Filing of this bond automatically stays the money judgment. The trial court may not increase or decrease the amount of the bond. When the appellate proceedings are concluded and the judgment is satisfied or reversed on appeal, it is good practice to obtain a written order from the trial court declaring that the bond is void, and that the surety's obligation is released.

In conclusion, stays can be used to limit the effect of an order or stop execution of a judgment. Wide discretion is held by the trial court to determine whether the stay should be granted or denied.

JLH/SMC/wig/tsr

*This is a summary of an article that appeared in the January 2012 edition of The Florida Bar Journal.