

Hurry Up and Wait

By: Lance M. Hester; Nov 2004

“Show Me The Money!” After judgment go straight to CR 62 and RAP 8.1 to determine when you can start executing. In the world of civil litigation it is rarely enough to simply win a lawsuit. Once judgment is entered it’s time for the attorneys to roll up their sleeves and begin the real work of getting everybody their compensation.

“Supplemental proceedings,” “supersedeas bonds,” and executing judgments are familiar terms, but unfamiliar processes for many attorneys. The parties have a short amount of time to get their respective acts together following judgment. Here’s a quick primer on the most immediate post judgment issue – the supersedeas bond.

5 and 14 day stays

After judgment is filed, the party to whom damages are due must wait five days before executing. See CR 62. If, however, the losing party files a notice of appeal before the lapse of the 5 days referenced in CR 62, judgment continues stayed for a grand total of 14 days. (Additional rules exist regarding non-money damages such as injunctions and property.)

Securing the judgment

If a judgment debtor has a solid appellate issue, a 14-day stay may seem an injustice. To account for this, RAP 8.1 addresses the “means of delaying the enforcement of a trial court decision in a civil case....”As it relates to money judgments, this appellate rule requires the debtor to either file in the trial court a supersedeas bond, to post cash, or to get the trial court’s approval on an alternate source of security.

The amount

RAP 8.1(c)(1) spells out as clear of standard for determining the amount as possible. It says, “The supersedeas amount shall be the amount of the judgment, plus interest likely to accrue during the pendency of the appeal and attorney fees, costs, and expenses likely to be awarded on appeal.”

Contesting the amount

If the creditor is dissatisfied with the amount the debtor posts, it can make its objection to the trial court. The trial court can obviously then order a proper adjustment.

Practically speaking...

If the losing party neglects to file a notice of appeal within five days, then the prevailing party can begin executing on the judgment immediately.

If a notice of appeal is filed, execution can begin as soon as 14 days following the entry of judgment. That will mean that the judgment debtor has only a very short amount of time to post the supersedeas amount. By statute, recently the interest rate was effectively reduced. Predicting the length of an appeal can make for an objectionable issue following the party's posting of the amount.

Very few insurers will write supersedeas bonds for money judgments. And those that do, charge a premium. Additionally, it is common for the bonding company to require the debtor to deposit with the bonding company a cashier's check for the entire supersedeas amount. The court will hold the money for substantially less. And because the rule also provides for "alternate security," there is no harm for the debtor to promptly request an alternate, such as an agreed order freezing a certain stock account, thus allowing interest to potentially accumulate during the appeal period.

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