RAP 8.1
SUPERSEDEAS PROCEDURE

(a) Application of Civil Rules. This rule provides a means of delaying the enforcement of a trial court decision in a civil case in addition to the means provided in CR 62(a), (b), and (h).

(b) Right To Stay Enforcement of Trial Court Decision. A trial court decision may be enforced pending appeal or review unless stayed pursuant to the provisions of this rule. Any party to a review proceeding has the right to stay enforcement of a money judgment or a decision affecting real, personal or intellectual property, pending review. Stay of a decision in other civil cases is a matter of discretion.

(1) Money Judgment. Except when prohibited by statute, a party may stay enforcement of a money judgment by filing in the trial court a supersedeas bond or cash, or by alternate security approved by the trial court pursuant to subsection (b)(4).

(2) Decision Affecting Property. Except where prohibited by statute, a party may obtain a stay of enforcement of a decision affecting rights to possession, ownership or use of real property or of tangible personal property, or intangible personal property, by filing in the trial court a supersedeas bond or cash, or alternate security approved by the trial court pursuant to subsection (b)(4). If the decision affects the rights to possession, ownership or use of a trademark, trade secret, patent, or other intellectual property, a party may obtain a stay in the trial court only if it is reasonably possible to quantify the loss that would be incurred by the prevailing party in the trial court as a result of the party's inability to enforce the decision during review.

(3) Other Civil Cases. Except where prohibited by statute, in other civil cases, including cases involving equitable relief ordered by the trial court, the appellate court has authority, before or after acceptance of review, to stay enforcement of the trial court decision upon such terms as are just. The appellate court ordinarily will condition such relief from enforcement of the trial court decision on the furnishing of a supersedeas bond, cash or other security. In evaluating whether to stay enforcement of such a decision, the appellate court will (i) consider whether the moving party can demonstrate that debatable issues are presented on appeal and (ii) compare the injury that would be suffered by the moving party if a stay were not imposed with the injury that would be suffered by the nonmoving party if a stay were imposed. The party seeking such relief should use the motion procedure provided in Title 17.

(4) Alternate Security. Upon motion of a party, or stipulation, the trial court or appellate court may authorize a party to post security other than a bond or cash, may authorize the establishment of an account consisting of cash or other assets held by a party, its counsel, or a non-party, or may authorize any other reasonable means of securing enforcement of a judgment. The effect of doing so is equivalent to the filing of a supersedeas bond or cash with the Superior Court.

(c) Supersedeas Amount. The amount of the supersedeas bond, cash or alternate security required shall be as follows:

(1) Money Judgment. 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.

(2) Decision Affecting Property. The supersedeas amount shall be the amount of any money judgment, plus interest likely to accrue during the pendency of appeal and attorney fees, costs and expenses likely to be awarded on appeal entered by the trial court plus the amount of the loss which the prevailing party in the trial court would incur as a result of the party's inability to enforce the judgment during review. Ordinarily, the amount of loss will be equal to the reasonable value of the use of the property during review. A party claiming that the reasonable value of the use of the property is inadequate to secure the loss which the party may suffer as a result of the party's inability to enforce the judgment shall have the burden of proving that the amount of loss would be more than the reasonable value of the use of the property during review. If the property at issue has value, the property itself may fully or partially secure any loss and the court may determine that no additional security need be filed or may reduce the supersedeas amount accordingly.

(3) Stay of Portion of Judgment. If a party seeks to stay enforcement of only part of the judgment, the supersedeas amount shall be fixed at such sum as the trial court determines is appropriate to secure that portion 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. If the judgment or decision provides for periodic payments, the trial court may in its discretion deny supersedeas, or permit the periodic posting of bonds, cash or alternate security.

(d) Form of Cash Supersedeas; Effect of Filing Bond or Other Security.

(1) A party superseding a judgment with cash deposited with the Superior Court should deposit the supersedeas amount with the Superior Court Clerk, accompanied by a Notice of Cash Supersedeas. The Notice may direct the clerk to invest the funds, subject to the clerk's investment fee, as provided in RCW 36.48.090.

(2) Upon the filing of a supersedeas bond, cash or alternate security approved by the trial court pursuant to subsection (b)(4), enforcement of a trial court decision against a party furnishing the bond, cash or alternate security is stayed. Unless otherwise ordered by the trial court or appellate court, upon the filing of a supersedeas bond, cash or alternate security any execution proceedings against a party furnishing the bond, cash or alternate security shall be of no further effect.

(e) Objection to Supersedeas. A party may object to the sufficiency of an individual surety on a bond, to the form of a bond, or to the amount of a bond or cash supersedeas by a motion in the trial court made within 7 days after the party making the motion is served with a copy of the bond and any supporting affidavits, if required. If the trial court determines that the bond is improper in form, or that the amount of the bond, cash, or net worth of an individual surety is inadequate, stay of enforcement of the trial court decision may be preserved only by furnishing a proper bond or supplemental bond or cash within 7 days after the entry of the order declaring the supersedas deficient.

(f) Supersedeas by Party Not Required To Post Bond. If a party is not required to post a bond, that party shall file a notice that the decision is superseded without bond and, after filing the notice, the party shall be in the same position as if the party had posted a bond pursuant to the provisions of this rule.

(g) Modification of Supersedeas Decision. After a supersedeas bond, cash or alternate security has been filed, the trial court may, upon application of a party or on its own motion, and for good cause shown, discharge the bond, change the supersedeas amount or require a new bond, additional cash or alternate security.

(h) Review of Supersedeas Decision. A party may object to a supersedeas decision of the trial court by motion in the appellate court.

References

CR 62, Stay of Proceedings To Enforce a Judgment; RCW 48.28.010, Requirements deemed met by surety insurer.

[Amended December 5, 2002; September 1, 2006.]