

RULE 62. STAY OF PROCEEDINGS TO ENFORCE A JUDGMENT

(a) Automatic Stay, Exceptions--Injunctions and Receiverships. Except as stated herein, no execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of 21 days after its entry or until the time for appeal from the judgment as extended by the rules governing appeals has expired. Unless otherwise ordered by the court, an interlocutory or final judgment in an action for an injunction or in a receivership action or an order relating to the care, custody and support of minor children or to the separate support or personal liberty of a person or for the protection of a person from abuse or harassment 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 (d) of this rule govern the suspending, modifying, restoring or granting of an injunction during the pendency of an appeal.

(b) Stay of Execution on Default Judgment. Execution in a personal action shall not issue upon a judgment by default against an absent defendant who has no actual notice thereof until one year after entry of the judgment except as provided by law.

(c) Order for Immediate Execution. In its discretion, the court on motion may, for cause shown and subject to such conditions as it deems proper, order execution to issue at any time after the entry of judgment and before an appeal from the judgment has been taken or a motion made pursuant to Rule 50, 52(b), 59, or 60; but no such order shall issue if a representation, subject to the obligations set forth in Rule 11, is made that a party intends to appeal or to make such motion. When an order for immediate execution under this subdivision is denied, the court may, upon a showing of good cause, at any time prior to appeal or during the pendency of an appeal order the party against whom execution was sought to give bond in an amount fixed by the court conditioned upon satisfaction of the damages for delay, interest, and costs if for any reason the appeal is not taken or is dismissed, or if the judgment is affirmed.

(d) Injunction Pending Appeal. When an appeal is taken from an interlocutory or final judgment granting, dissolving, or denying an injunction, the court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party.

(e) Stay Upon Appeal. Except as provided in subdivisions (c) and (d) of this rule, the taking of an appeal from a judgment shall operate as a stay of execution upon the judgment during the pendency of the appeal, and no supersedeas bond or other security shall be required as a condition of such stay.

(f) Continuance of Attachment. An attachment of real or personal property or an attachment on trustee process or a bond given to vacate any such attachment or to release the defendant from arrest on capias writ shall, unless dissolved by operation of law, continue during the time within which an appeal may be taken from the judgment and during the pendency of any appeal. When a judgment has become final by expiration of the time for appeal, by dismissal of an appeal, or on certificate of decision from the Superior Court or Law Court, any such attachment or bond shall continue for 60 days if the judgment is for the plaintiff but shall be dissolved forthwith if the judgment is for the defendant.

(g) Power of Reviewing Court Not Limited. The provisions in this rule do not limit any power of the Superior Court or Law Court during the pendency of an appeal to suspend, modify, restore, or grant an injunction 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 as to Multiple Claims or 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.

Advisory Committee Note
April 2, 2007

Rule 62(a) is amended to recognize that the time when a judgment becomes final and subject to enforcement is now 21 days after entry. M.R. App. P. 2(b)(3). The amendment also recognizes the special proceedings to protect people from abuse and harassment, 19-A M.R.S. §§ 4001 to 4014 (2006) and 5 M.R.S. §§ 4651 to 4660-A (2006). An amendment to subdivision (a) is added to provide that orders under the relief provisions of these statutes are not stayed pending appeal. The intent of the amendment is to maintain court-ordered personal safety protections during the appeal. In individual cases, however, relief ordered by the court may be appropriately and safely stayed pending appeal, as in the case of orders for the payment of money. In such cases, the burden is on the appellant to

move the court to "otherwise order" a stay during the pendency of the appeal of all or part of the relief ordered. The trial court is invested by subdivision (a) with broad discretion to make such orders as are required by the case. In addition, subdivision (g) empowers the reviewing court to "make any order appropriate" to preserve the status quo or to ensure the effectiveness of the judgment subsequently to be entered.

Advisory Committee's Notes
January 1, 2001

Rule 62(a) is amended to strike the references to the specific appeal rules and substitute a general reference to the "rules governing appeals." This change covers a reference to both the old rules and the new rules during the time when both may be in effect. It also provides a sufficient continuing reference to the Rules of Appellate Procedure.

Advisory Committee's Notes
1989

Rule 62(a) is amended to provide that the exception to the automatic stay of execution provisions provided in the rule for certain orders involving minor children or spouses is no longer limited to divorce actions, and that the exception for orders involving separate support and personal liberty is no longer limited to spouses. The effect of the amendment is to make clear that the exception applies to appeals from protective and other orders in domestic abuse proceedings under 19 M.R.S.A. § 766 and support proceedings under 19 M.R.S.A. § 214. The amendment sets forth what would have been the appropriate construction of the rule in any case consistent with its provisions for such orders in divorce actions, which were added prior to the enactment of the protection from abuse statutes. Note that the court retains the power to order a stay in a proper case.

Advisory Committee's Notes
1987

Rule 62(a) is amended to substitute "spouse" for "wife" in the description of actions for separate support or personal liberty which are not to be stayed prior to or pending appeal without court order. The amendment brings the language of the rule into line with what has long been the statutory language. *See* 19 M.R.S.A. §§ 693, (amended P.L. 1977, ch. 439, § 3), 694 (amended P.L. 1975, ch. 701, § 10).

Advisory Committee's Note
December 31, 1967

This amendment eliminates the difference between the Federal and the Maine Rule 62(a) which was noted in *Hazzard v. Westview Golf Club, Inc.*, 217 A.2d 217, 222 (Me.1966).

Explanation of Amendments
(Feb. 1, 1960; Nov. 1, 1966)

The 1960 amendment of Rule 62(a) was to make certain that the wife and children are cared for pending an appeal in a divorce action. This is especially important in cases where it has been found necessary to place children in the care of the Department of Health and Welfare to prevent their neglect.

The 1966 amendment of Rule 62(h) was taken from a 1961 amendment of F.R. 62(h). It substituted a simple reference to “the conditions stated in Rule 54(b)” for the original reference to judgment “on some but not all of the claims.” M.R.C.P. 54(b) picked up a proposed 1955 amendment to F.R. 54(b), not then adopted by the Supreme Court, which added a reference to multiple parties to the provision for final judgment on less than all of multiple claims in an action. When the amendment to F.R. 54(b) was finally adopted in 1961, it was noticed that a conforming amendment to Rule 62(h) was required. Its omission from M.R.C.P. 62(h) was an inadvertence.

Reporter's Notes
December 1, 1959

This rule follows neither Federal Rule 62 nor present state practice. Its purpose is to come as closely as possible to the essentials of present practice and still fit within the framework of a set of rules based for the most part upon federal procedure. The merger of law and equity, the abolition of terms as measuring the time for doing any acts under the rules, and the abolition of exceptions compel departures from existing methods of appellate review. Review of all actions, legal or equitable, is by appeal as in the federal system. Rule 73. See Reporter's Notes to Rule 54.

The federal procedure with respect to judgment and execution does not, however, seem satisfactory. It gives an automatic ten-day stay of execution after

entry of judgment to give the parties time to decide what, if any, post-verdict motions are to be made. The court may give a further stay pending the disposition of any such motions, but if an appeal is taken there is no further stay pending appeal unless the appellant gives a supersedeas bond conditioned upon full satisfaction of the judgment. If no supersedeas bond is given, the prevailing party may obtain execution while the appeal is pending. He must, of course, repay what he has received in the event of a reversal of the judgment.

Under present Maine law, on the other hand, a case in which a bill of exceptions has been filed before the end of the term in which it was tried is marked "Law" and does not go to judgment until after rescript from the Law Court. This means that there can be no execution until that time. A case where no exceptions are filed goes to judgment as of the last day of the term, and execution can be taken out at once. The result is that a defendant can by filing exceptions delay execution until the Law Court has acted and there is no occasion to require him to give any security for the satisfaction of an ultimate judgment.

Rule 62(a) provides that no execution shall issue until the time for appeal has expired, and Rule 62(e) says that the taking of an appeal shall stay execution during the pendency of the appeal. This approximates present practice in cases where exceptions are filed, but the 30-day appeal period will increase the delay in getting execution in cases where the defeated party has no intention of litigating the matter further. It does not seem desirable thus to delay execution in the routine collection type of case in which exceptions are unlikely and which would go to judgment at present at the end of the term.

Rule 62(c) is designed to make it possible to get an immediate order for execution in appropriate cases. A winning plaintiff may move for such an order, which the court has discretion to grant "for cause shown." The normal cause would be that the case is one in which there is no likelihood of an appeal. The rule goes on to provide that no such order shall issue if opposing counsel represents to the court that he intends to appeal. This representation is expressly made subject to the obligations set forth in Rule 11, calling for the attorney's good faith. It is not believed that a Maine lawyer would make a false representation of this intention, but he might very properly represent that he has been unable to get a decision from his client. Presumably he would then be afforded a reasonable time to get instructions.

The rule continues with a provision that at any time prior to appeal or during its pendency the court may on a showing of good cause order a party against whom

execution is denied under this Rule 62(c) to give a bond conditioned upon satisfaction of the damages for delay, interest and costs if the appeal is not taken, or is dismissed, or the judgment is affirmed. This would seem to offer some deterrent to the frivolous appeal, and seems fairer than to require a bond conditioned upon satisfaction of the judgment. In the typical case the bond presumably would cover only interest and costs, the "damage" from loss of the use of the money in the interval being in legal contemplation only the interest upon it.

Rule 62(b) is not in the federal rule. It preserves the existing statutory provision with respect to execution on default judgments. R.S.1954, Chap. 113, Secs. 5-7 (amended in 1959) [now 14 M.R.S.A. §§ 4701-4703].

Rule 62(d) follows Federal Rule 62(c) with respect to injunctions during the pendency of appeal. Compare Revised Rules of Court 18 (supersedes of execution of peremptory writ or other process).

Rule 62(f) is designed to protect an attachment so long as the possibility remains that the plaintiff may obtain a judgment and for 60 days after such judgment. This conforms to R.S.1954, Chap. 112, Sec. 72, as amended in 1959 [now 14 M.R.S.A. § 4601]. This period had previously been 30 days.

Rule 62(g) is essentially the same as Federal Rule 62(g). It makes it clear that nothing in the rule limits any power which the Law Court would otherwise have to take action during the pendency of an appeal.

Rule 62(h) is the same as Federal Rule 62(h). It gives the court power to stay enforcement of a final judgment entered pursuant to Rule 54(b) on less than all of the claims in a single action until judgment on the remaining claims. The court may prescribe appropriate conditions for such stay. For instance, judgment on a claim might be stayed awaiting judgment on a counterclaim only if the plaintiff gave bond to satisfy the judgment. *Omark Industries, Inc. v. Lubanko Tool Co.*, 266 F.2d 540 (2d Cir. 1959).