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## IN GENERAL

**Rule 1701. Effect of Appeal Generally.**

(a) *General rule.*—Except as otherwise prescribed by these rules, after an appeal is taken or review of a quasijudicial order is sought, the trial court or other government unit may no longer proceed further in the matter.

(b) *Authority of a trial court or other government unit after appeal.*—After an appeal is taken or review of a quasijudicial order is sought, the trial court or other government unit may:

(1) Take such action as may be necessary to preserve the *status quo*, correct formal errors in papers relating to the matter, cause the record to be transcribed, approved, filed, and transmitted, grant leave to appeal *in forma pauperis*, grant *supersedeas*, and take other action permitted or required by these rules or otherwise ancillary to the appeal or petition for review proceeding.

(2) Enforce any order entered in the matter, unless the effect of the order has been superseded as prescribed in this chapter.

(3) Grant reconsideration of the order which is the subject of the appeal or petition, if:

(i) an application for reconsideration of the order is filed in the trial court or other government unit within the time provided or prescribed by law; and

(ii) an order expressly granting reconsideration of such prior order is filed in the trial court or other government unit within the time prescribed by these rules for the filing of a notice of appeal or petition for review of a quasijudicial order with respect to such order, or within any shorter time provided or prescribed by law for the granting of reconsideration.

A timely order granting reconsideration under this paragraph shall render inoperative any such notice of appeal or petition for review of a quasijudicial order theretofore or thereafter filed or docketed with respect to the prior order. The petitioning party shall and any party may file a *praecipe* with the prothonotary of any court in which such an inoperative notice or petition is filed or docketed and the prothonotary shall note on the docket that such notice or petition has been stricken under this rule. Where a timely order of reconsideration is entered under this paragraph, the time for filing a notice of appeal or petition for review begins to run anew after the entry of the decision on reconsideration, whether or not that decision amounts to a reaffirmation of the prior determination of the trial court or other government unit. No additional fees shall be required for the filing of the new notice of appeal or petition for review.

(4) Authorize the taking of depositions or the preservation of testimony where required in the interest of justice.

(5) Take any action directed or authorized by an appellate court.

(6) Proceed further in any matter in which a non-appealable interlocutory order has been entered, notwithstanding the filing of a notice of appeal or a petition for review of the order.

(c) *Limited to matters in dispute.*—Where only a particular item, claim, or assessment adjudged in the matter is involved in an appeal, or in a petition for review proceeding relating to a quasijudicial order, the appeal or petition for review proceeding shall operate to prevent the trial court or other government unit from proceeding further with only such item, claim, or assessment, unless otherwise ordered by the trial court or other government unit or by the appellate court or a judge thereof as necessary to preserve the rights of the appellant.

(d) *Original jurisdiction petitions for review.*—The filing of an original jurisdiction petition for review shall not affect the power or authority of the government unit to proceed further in the matter, but the government unit shall be subject to any orders entered by the appellate court or a judge thereof pursuant to this chapter.

(e) *Petitions for specialized review.*—The filing of a petition for specialized review under Chapter 16 shall not affect the power or authority of the trial court or other government unit to proceed further in the matter, but the provisions of this chapter relating to *supersedeas* of the order of the trial court or other government unit shall apply.

**Official Note:** The following statutory provisions relate to *supersedeas* generally:

42 Pa.C.S. § 702(c) (*supersedeas*) provides that, except as otherwise prescribed by general rule, a petition for permission to appeal under that section shall not stay the proceedings before the trial court or other government unit, unless the trial court or other government unit or the appellate court or a judge thereof shall so order. *See also* Pa.R.A.P. 1313 (effect of filing petition).

42 Pa.C.S. § 5105(e) (*supersedeas*) provides that an appeal shall operate as a *supersedeas* to the extent and upon the conditions provided or prescribed by law, and that unless a *supersedeas* is entered, no appeal from an order concerning the validity of a will or other instrument or the right to the possession of or to administer any real or personal property shall suspend the powers or prejudice the acts of the appointive judicial officer, personal representative, or other person acting thereunder.

Paragraph (a) codifies a well-established principle. *See, for example, Merrick Estate*, 247 A.2d 786, 787 (Pa. 1968); *Corace v. Balint*, 210 A.2d 882, 889 (Pa. 1965). Pa.R.A.P. 5102 saves the provisions of Section 426 of the Pennsylvania Workers' Compensation Act, 77 P.S. § 871, which permit a rehearing by the agency under certain circumstances during the pendency of an appeal. Pa.R.A.P. 311(h) (further proceedings in trial court) provides that paragraph (a) is not applicable where an appeal as of right is taken from interlocutory orders relating to attachments, custodianships, receiverships, and injunctions, and that when such matters are appealed, the trial court may nonetheless proceed with the underlying case.

Subparagraph (b)(1) sets forth an obvious power of the trial court or other government unit under these rules to take actions to preserve the *status quo* and to clarify or correct an order or verdict. The power to clarify or correct does not extend to substantive modifications. *See Pa. Indus. Energy Coalition v. Pennsylvania PUC*, 653 A.2d 1336, 1344-45 (Pa. Cmwlth. 1995), *aff'd*, 670 A.2d 1152 (Pa. 1996). Examples of permissible actions to preserve the *status quo* are those "auxiliary to the appellate process, such as a *supersedeas* or injunction." *Id.* Examples of permissible corrections are "non-substantial technical amendments to an order, changes in the form of a decree, and modification of a verdict to add prejudgment interest." *Id.* at 1344. "Such actions have no effect on the appeal or petition for review and cannot prompt a new appealable issue." *Id.* at 1345.

Among the permissible “corrections” is the addition or modification of contractual or statutory prejudgment interest, which is an element of contract damages. In such cases, the award of such interest is mandatory and not discretionary. *TruServ Corp. v. Morgan’s Tool & Supply Co. Inc.*, 39 A.3d 253, 264 (Pa. 2012). Accordingly, even though the amount of a verdict is changed by the addition of prejudgment interest, the verdict has been “corrected” and not “modified.”

The Supreme Court has held that, so long as a motion for attorneys’ fees has been timely filed, a trial court may act on that motion under subparagraph (b)(1) even after an appeal has been taken. *Samuel-Bassett v. Kia Motors Am., Inc.*, 34 A.3d 1, 48 (Pa. 2011). Thus, unlike the court actions discussed in *Pennsylvania Industrial Energy Coalition*, an award of attorneys’ fees constitutes a separately appealable order that would be reviewable upon filing of a timely separate notice of appeal, measured from the date the fee award order was entered.

Generally an appeal does not operate as a *supersedeas* of an order of a government unit.

Subparagraph (b)(3) is intended to address the troublesome question of the effect of an application for reconsideration on the appeal process. By statute, a trial court has only 30 days from the entry of a final order to “modify or rescind” its order. 42 Pa.C.S. § 5505; *see also Key Automotive Equip. Specialists v. Abernethy*, 636 A.2d 1126, 1128 (Pa. Super. 1994) (recognizing that the statute does not apply to limit reconsideration of interlocutory orders). Under this rule, an express determination by a trial court or other government unit within 30 days that it is reconsidering its earlier order satisfies the statutory requirement; the trial court or other government unit does not need to grant the relief sought in the application for reconsideration within the 30 days. The 30-day period protects against the risk that someone could take a “snap” appeal and foreclose reconsideration, but, because the clock is running on the appeal period and the period for reconsideration simultaneously, filing the notice of appeal at the same time as or shortly after the motion for reconsideration will protect against waiver of the appeal if the trial court or other government unit fails to act.

Subparagraph (b)(3) provides that: “[W]here a timely order of reconsideration is entered under this paragraph, the time for filing a notice of appeal or petition for review begins to run anew after entry of the decision on reconsideration.” Pursuant to Pa.R.C.P. 1930.2, if reconsideration from a domestic relations order has been timely granted, a reconsidered decision or an order directing additional testimony must be entered within 120 days of the entry of the order granting reconsideration or the motion shall be deemed denied. *See* Pa.R.C.P. 1930.2(c), (d), and (e). The date from which the appeal period will be measured following a reconsidered decision in a domestic relations matter is governed by Pa.R.C.P. 1930.2(d) and (e).

Pa.R.Crim.P. 720 and 721 set fixed times for reconsideration of a decision on a defendant’s post-sentence motion or on a Commonwealth motion to modify sentence, and reconsideration of a deemed denial is prohibited. The judge may not vacate sentence or “grant reconsideration” pursuant to subparagraph (b)(3) in order to extend the time limits for disposition of those motions.

Paragraphs (d) and (e) explain that original jurisdiction petitions for review and petitions for specialized review do not come within Pa.R.A.P. 1701; accordingly, any stay or *supersedeas* must be sought under other provisions of Chapter 17.

Subparagraph (b)(5) recognizes the authority that an appellate court has to retain jurisdiction while asking a trial court or other government unit to engage in factfinding, an authority that is particularly important when questions arise in an appellate court about the course of events in the trial court or when representation by counsel becomes an issue on appeal.

#### Source

The provisions of this Rule 1701 amended through December 10, 1986, effective January 31, 1987, and shall govern all matters thereafter commenced and, insofar as just and practicable, matters then pending, 16 Pa.B. 4951; amended August 22, 1997, effective January 1, 1998, 27 Pa.B. 4543; amended April 9, 2013, effective to appeals and petitions for review filed 30 days after adoption, 43 Pa.B. 2271; amended January 7, 2020, effective May 1, 2020, 50 Pa.B. 535; amended January 7, 2020, effective August 1, 2020, 50 Pa.B. 505. Immediately preceding text appears at serial pages (400767) to (400770).

**Rule 1702. Stay Ancillary to Appeal or Review.**

(a) *Right of appeal or review.*—When a party has an appeal as of right, a party may seek relief under this chapter after the filing of a notice of appeal, a petition for review, or a petition for specialized review.

(b) *Discretionary appeal or review.*—When a party intends to pursue discretionary appellate review, the party may seek relief under this chapter prior to the filing of a petition for allowance of appeal or a petition for permission to appeal.

(1) The failure to timely file such petition, or its denial, shall operate to vacate any ancillary order entered under this chapter.

(2) Any party thereafter may file a *praecipe* with the prothonotary or the clerk of the court in which the ancillary order was entered directing entry of a formal order vacating such ancillary order.

(c) *Supreme Court review of appellate court supersedeas and stay determinations.*—No appeal, petition for allowance of appeal, petition for review, or petition for specialized review need be filed in the Supreme Court in connection with an application under Pa.R.A.P. 3315.

**Official Note:** Relief sought from an appellate court should be in the form of an application in accordance with Pa.R.A.P. 123 and Pa.R.A.P. 1703.

Paragraph (a) reflects the requirement that when an appellant has a right of appeal or review, the notice of appeal, or petition for review or specialized review must be filed before the application seeking a stay is filed pursuant to Pa.R.A.P. 1732(a) (Application for Stay or Injunction Pending Appeal) or Pa.R.A.P. 1781(a) (Stay Pending Action on Petition for Review or Petition for Specialized Review). Stays pending the outcome of post-trial or post-sentence motions are not governed by this chapter. *See, e.g.*, Pa.R.C.P. 227.1 (Post-Trial Relief); Pa.R.Crim.P. 720 (Post-Sentence Procedures; Appeal).

**Source**

The provisions of this Rule 1702 amended May 16, 1979, effective September 30, 1979, 9 Pa.B. 1740; amended October 7, 2005, effective February 1, 2006, 35 Pa.B. 5768; amended May 31, 2013, effective immediately, 43 Pa.B. 3223; amended January 7, 2020, effective August 1, 2020, 50 Pa.B. 505; amended November 10, 2021, effective January 1, 2022, 51 Pa.B. 7341. Immediately preceding text appears at serial page (401659).

**Rule 1703. Contents of Application for Stay.**

In addition to the requirements set forth in Pa.R.A.P. 123 (Application for Relief), an application for stay pursuant to this chapter shall set forth the procedural posture of the case, including the result of any application for relief in any court below or federal court, the specific rule under which a stay or supersedeas is sought, grounds for relief, and, if expedited relief is sought, the nature of the emergency. The application shall also identify and set forth the procedural posture of all related proceedings. The application shall contain the certificate of compliance required by Pa.R.A.P. 127.

**Source**

The provisions of this Rule 1703 adopted March 15, 2004, effective 60 days after adoption, 34 Pa.B. 1670; amended January 5, 2018, effective January 6, 2018, 48 Pa.B. 461. Immediately preceding text appears at serial page (386607).

**Rule 1704. Application in a Capital Case for a Stay of Execution or for Review of an Order Granting or Denying a Stay of Execution.**

Prior notice of the intent to file an application in a capital case for a stay or review of an order granting or denying a stay of execution shall be provided to the Prothonotary of the Pennsylvania Supreme Court, if prior notice is practicable.

The application for stay or review shall set forth the following:

1. The date the warrant issued; the date and nature of the order that prompted the issuance of the warrant; and the date the execution is scheduled, if a date has been set;
2. Whether any direct or collateral challenges to the underlying conviction are pending, and, if so, in what court(s) or tribunal(s);
3. Whether any other applications for a stay of the pending execution have been filed, and, if so, in what court(s) or tribunal(s), when, and the status of the application(s);
4. The grounds for relief and the showing made to the trial court of entitlement to a stay under 42 Pa.C.S. § 9545(c), if applicable;
5. A statement certifying that emergency action is required and setting forth a description of the emergency.

All dockets, pleadings, and orders that are referred to in 1-5 above must be attached to the application. If any of the information provided in the application changes while the motion is pending, the party seeking the stay or review must file with the Pennsylvania Supreme Court written notice of the change within 24 hours.

No notice of appeal, petition for review, or petition for specialized review needs to be filed in order to file an application under this rule.

**Source**

The provisions of this Rule 1704 adopted May 31, 2013, effective immediately, 43 Pa.B. 3223; amended January 7, 2020, effective August 1, 2020, 50 Pa.B. 505. Immediately preceding text appears at serial page (389974).

**STAY OR INJUNCTION IN CIVIL MATTERS**

**Rule 1731. Automatic Supersedeas of Orders For the Payment of Money.**

(a) *General Rule.*—Except as provided by subdivision (b), an appeal from an order involving solely the payment of money shall, unless otherwise ordered pursuant to this chapter, operate as a supersedeas upon filing with the clerk of the lower court of appropriate security in the amount of 120% of the amount found due by the lower court and remaining unpaid. Where the amount is payable over a period of time, the amount found due for the purposes of this rule shall be the aggregate amount payable within 18 months after entry of the order.

(b) *Domestic Relations Matters.*—An appeal from an order of child support, spousal support, alimony, alimony pendente lite, equitable distribution or counsel fees and costs shall operate as a supersedeas only upon application to and order of the trial court and the filing of security as required by subdivision (a). The amount and terms of security shall be within the discretion of the trial court.

**Source**

The provisions of this Rule 1731 amended November 24, 1986, effective December 13, 1986, 16 Pa.B. 4798; amended December 30, 1987, effective January 16, 1988 and shall govern all matters thereafter commenced and, insofar as just and practicable, matters then pending, 18 Pa.B. 245. Immediately preceding text appears at serial pages (115441) to (115442).

**Rule 1732. Application for Stay or Injunction Pending Appeal. Number of Copies to be Filed.**

(a) *Application to trial court.*—Application for a stay of an order of a trial court pending appeal, or for approval of or modification of the terms of any *supersedeas*, or for an order suspending, modifying, restoring, or granting an injunction during the pendency of an appeal, or for relief in the nature of peremptory mandamus, must ordinarily be made in the first instance to the trial court, except where a prior order under this chapter has been entered in the matter by the appellate court or a judge thereof.

(b) *Contents of application for stay.*—An application for stay of an order of a trial court pending appeal, or for approval of or modification of the terms of any *supersedeas*, or for an order suspending, modifying, restoring, or granting an injunction during the pendency of an appeal, or for relief in the nature of peremptory mandamus, may be made to the appellate court or to a judge thereof, but the application shall show that application to the trial court for the relief sought is not practicable, or that the trial court has denied an application, or has failed to afford the relief which the applicant requested, with the reasons given by the trial court for its action. The application shall also show the reasons for the relief requested and the facts relied upon, and if the facts are subject to dispute the application shall be supported by sworn or verified statements or copies thereof. With the application shall be filed such parts of the record as are relevant. Where practicable, the application should be accompanied by the briefs, if any, used in the trial court. The application shall contain the certificate of compliance required by Pa.R.A.P. 127.

(c) *Number of copies to be filed.*— To determine the number of copies to be filed, see Pa.R.A.P. 124(c) and its Official Note.

**Official Note:** See generally *Pennsylvania Public Utility Commission v. Process Gas Consumers Group*, 467 A.2d 805 (Pa. 1983), for the criteria for the issuance of a stay pending appeal.

**Source**

The provisions of this Rule 1732 amended September 10, 2008, effective December 1, 2008, 38 Pa.B. 5257; amended January 5, 2018, effective January 6, 2018, 48 Pa.B. 461; amended February 8, 2019, effective April 1, 2019, 49 Pa.B. 832; amended October 28, 2021, effective April 1, 2022, 51 Pa.B. 7050. Immediately preceding text appears at serial page (395767).

**Rule 1733. Requirements for Supersedeas on Agreement or Application.**

(a) *General rule.*—An appeal from an order which is not subject to Rule 1731 (automatic supersedeas of orders for the payment of money), shall, unless otherwise prescribed in or ordered pursuant to this chapter, operate as a *super-*

*sedeas* only upon the filing with the clerk of the court below of appropriate security as prescribed in this rule. Either court may, upon its own motion or application of any party in interest, impose such terms and conditions as it deems just and will maintain the res or status quo pending final judgment or will facilitate the performance of the order if sustained.

(b) *Tangible property.*—When the order determines the disposition of the property in controversy as in real actions, replevin, and actions to foreclose mortgages or when such property is in the custody of the sheriff, or when the proceeds of such property or appropriate security for its value is in the possession, custody or control of the court, the amount of the additional security shall be fixed by agreement of the parties, or by the court, at such sums only as will secure any damages for the use and detention of the property, interest, the costs of the matter and costs on appeal.

(c) *Other cases.*—In all other cases the security shall be in such amount as the lower court in the first instance or the appellate court or a judge thereof shall deem just and proper.

(d) *Public Officer.*—Where the effect of an order is to remove a public officer from office a supersedeas of the order shall not reinstate the officer unless the order of supersedeas shall expressly so provide.

**Official Note:** The court is granted wide discretion under this rule as to the terms and conditions to be imposed and it may require (1) the execution and deposit of a deed where the order



appealed from directs the execution of the conveyance or other instrument, (2) the delivery of personal property for safe keeping pending appeal where the order appealed from directs the assignment or delivery of such property, or (3) other terms required in the interest of justice.

**Source**

The provisions of this Rule 1733 amended December 11, 1978, effective December 30, 1978, 8 Pa.B. 3802. Immediately preceding text appears at serial page (25435).

**Rule 1734. Appropriate Security.**

(a) *General rule.*—For the purposes of this chapter any of the following, when deposited with the clerk, constitutes appropriate security, unless otherwise ordered pursuant to this chapter:

- (1) Legal tender of the United States.
- (2) Any of the following, if registered in the name of or to the order of the Commonwealth of Pennsylvania:
  - (i) United States Treasury bills;
  - (ii) certificates of deposit issued by a Federally-insured bank, bank and trust company, savings bank, savings association, banking association or savings and loan association having an office within this Commonwealth;
  - (iii) irrevocable letters of credit issued by a Federally-insured bank, bank and trust company, savings bank, savings association, banking association or saving and loan association having an office within this Commonwealth. The clerk may transfer or negotiate such bills or certificates for the purposes of this chapter.
- (3) A bond conforming to the requirements of this rule executed by a surety company which has qualified with the clerk under Section 664 of The Insurance Company Law of 1921 (40 P. S. § 835).
- (4) A bond conforming to the requirements of this rule executed by a surety approved by the court as sufficient.

(b) *Terms of bond.*—A supersedeas bond shall be conditioned for the satisfaction of the order if it is affirmed or if for any reason the appeal is dismissed, or for the satisfaction of any modification of the order and in either case costs, interest and any damages for delay that may finally be awarded.

(c) *Liability of sureties.*—If security is given under this chapter in the form of a bond, stipulation or other undertaking in the nature of a bond, with one or more sureties, each surety submits himself to the jurisdiction of the lower court and irrevocably appoints the clerk of the lower court as his agent upon whom any papers affecting his liability on the bond or undertaking may be served. This liability may be enforced on application in the lower court without the necessity of an independent action. The application and such notice of the application as the lower court prescribes may be served on the clerk of the lower court, who shall forthwith mail copies to the sureties if their addresses are known.

**Official Note:** 42 Pa.C.S. § 3561 (money paid into court) provides that all money paid into court shall be held in the custody of such officer, shall be invested in such manner, and shall be withdrawn from deposit, as shall be prescribed by general rules, and that any such investment, except as otherwise prescribed by or pursuant to general rules, shall be restricted to obligations of the United States or of the United States Treasury, or of the Commonwealth. Rule 1734(a)(2) provides an expanded form of investment as contemplated by the statute.

As to book-entry treasury bills deposited in court, see 31 CFR § 350.3(a)(5).

#### Source

The provisions of this Rule 1734 amended through April 26, 1982, effective September 12, 1982, 12 Pa.B. 1536; amended July 7, 1997, effective in 60 days, 27 Pa.B. 3503. Immediately preceding text appears at serial pages (124447) to (124448)

### **Rule 1735. Effect of *Supersedeas* on Execution or Distribution.**

(a) *General rule.*—The filing of appropriate security in the amount required by or pursuant to this chapter within 30 days from the entry of the order appealed from shall stay any execution theretofore entered. The filing of such appropriate security after the 30 day period shall stay only executions or distributions thereafter issued or ordered.

(b) *Notation in judgment index.*—Upon the filing of appropriate security in the amount required by or pursuant to this chapter the clerk of the lower court shall note in the docket and in any separate judgment index: “appeal perfected; lien discharged.” Upon return of the record by the appellate court to the lower court, in a matter where the order appealed from was affirmed in whole or in part, the clerk of the lower court shall thereupon enter an order, as of the date of receipt of the remanded record, against the appellant for the amount due upon the order as affirmed, with interest and costs as provided by law.

#### Source

The provisions of this Rule 1735 amended December 11, 1978, effective December 30, 1978, 8 Pa.B. 3802. Immediately preceding text appears at serial page (27950).

### **Rule 1736. Exemption from Security.**

(a) *General rule.*—No security shall be required of:

- (1) The Commonwealth or any officer thereof, acting in his official capacity.
- (2) Any political subdivision or any officer thereof, acting in his official capacity, except in any case in which a common pleas court has affirmed an arbitration award in a grievance or similar personnel matter.
- (3) A party acting in a representative capacity.
- (4) A taxpayer appealing from a judgment entered in favor of the Commonwealth upon an account duly settled when security has already been given as required by law.
- (5) An appellant who has already filed security in a lower court, conditioned as prescribed by these rules for the final outcome of the appeal.

(b) *Supersedeas automatic.*—Unless otherwise ordered pursuant to this chapter the taking of an appeal by any party specified in Subdivision (a) of this rule shall operate as a *supersedeas* in favor of such party, which *supersedeas* shall continue through any proceedings in the United States Supreme Court.

**Official Note:** This rule is self-executing, and a party entitled to its benefits is not required to bring the exemption to the attention of the court under Rule 1732 (application for stay or injunction pending appeal). However, the appellee may apply under Rule 1732 for elimination or other modification of the automatic *supersedeas* or under Rule 1737 (objections to security) for an order requiring security as a condition to the continuance of the stay, or for relief under any other applicable provision of this chapter.

The 1987 amendment eliminates the automatic *supersedeas* for political subdivisions on appeals from the common pleas court where that court has affirmed an arbitration award in a grievance or similar personnel matter.

The definition of “Appeal” in Pa.R.A.P. 102 does not reference proceedings in the United States Supreme Court. Rule 102 further defines “Determination” as “Action or inaction by a government unit which action or inaction is subject to judicial review by a court under Section 9 of Article V of the Constitution of Pennsylvania or otherwise. . . .” While the word “otherwise” could be read broadly to include the United States Supreme Court, the more specific reference to the Pennsylvania Constitution as limiting the scope of the term suggests that the Federal Courts are not part of the definition when “court” is used in the Rules. In light of this ambiguity, the Rule has been amended to make clear that the automatic *supersedeas* in subsection (b) continues through any proceedings in the United States Supreme Court.

#### Source

The provisions of this Rule 1736 amended December 11, 1978, effective December 30, 1978, 8 Pa.B. 3802; amended May 16, 1979, effective September 30, 1979, 9 Pa.B. 1740; amended December 30, 1987, effective January 16, 1988 and shall govern all matters thereafter commenced and, insofar as just and practicable, matters then pending, 18 Pa.B. 245; amended September 20, 2011, effective immediately, 41 Pa.B. 5353. Immediately preceding text appears at serial pages (233886) to (233887).

### Rule 1737. Modification of Terms of *Supersedeas*.

(a) The trial court or the appellate court, may at any time, upon application of any party and after notice and opportunity for hearing:

- (1) require security of a party otherwise exempt from the requirement of filing security upon cause shown;
- (2) strike off security improperly filed;
- (3) permit the substitution of surety and enter an exoneration of the former surety; or
- (4) increase, decrease, eliminate, or otherwise alter the amount or type of any security that has been or is to be filed by a party, upon cause shown for the modification.

(b) The parties may at any time stipulate to the type or amount of security and, upon filing, such a written stipulation will act to set the terms of a *supersedeas* of the judgment to the same extent as would an order of the court.

**Official Note:** The amount of automatic *supersedeas* of money judgments has been set at 120 percent of the verdict, and in most instances that amount will assure payment of a judgment and interest accrued during an appeal without imposing undue hardship on an appellant. *See* Pa.R.A.P. 1731. Nonetheless, there may be circumstances in which it would be appropriate for a court to modify the default approach to security, either in type, method, or time for posting, or in amount. Courts have the discretion to increase or decrease and to eliminate the requirement that security be posted, based upon the proofs offered by the parties. The parties by agree-

ment may also determine to modify the amount or type of *supersedeas*, particularly given that Pa.R.A.P. 2771 provides for the premium paid for the cost of *supersedeas* bonds or other appellate bonds to be taxable as a cost on appeal.

A party may seek appellate review of an order resolving an application under this rule. *See* Pa.R.A.P. 1732 and Pa.R.A.P. 3315.

#### Source

The provisions of this Rule 1737 amended June 7, 2016, effective October 1, 2016, 46 Pa.B. 3232. Immediately preceding text appears at serial page (358855).

### Rule 1738. Substitution of Security.

The clerk of the lower court, unless otherwise ordered pursuant to this chapter, shall permit an appellant to withdraw all or part of the security and substitute other appropriate security complying with the requirements of this chapter.

**Official Note:** Under this rule the appellant may, e.g., “roll over” certificates of deposit for the purpose of redeeming matured certificates, *etc.*

### Rule 1739. Order for Sale of Perishable Property.

When perishable property is the subject of the appeal, the lower court may make any order relating to its sale or disposition that shall be necessary or proper, and direct any fund realized to be paid into court to await the outcome of the appeal.

**Official Note:** 42 Pa.C.S. § 3546 (relief from liability for loss of property if expenses not paid) provides that any officer enforcing orders of a tribunal shall be relieved from any liability for the loss, destruction, removal of or damage to any personal property, or for any injury to any real property, levied upon, seized or taken into possession by virtue of any process if the person lodging such process with the officer shall refuse to advance or secure upon demand the reasonable fees and expenses incident to the seizure, safekeeping and proper protection of such property.

#### Source

The provisions of this Rule 1739 amended December 11, 1978, effective December 30, 1978, 8 Pa.B. 3802. Immediately preceding text appears at serial page (27952).

### Rule 1740. Order for an Accounting.

Unless otherwise ordered pursuant to this chapter the taking of an appeal from an order directing an accounting shall operate as a *supersedeas* of the order.

**Official Note:** This rule is based on act of June 24, 1895 (P. L. 243, No. 150). Ordinarily this rule will be applicable only where an appeal has been permitted under Rule 312 (interlocutory appeals by permission). *See* note to Rule 311 (interlocutory appeals as of right).

#### Source

The provisions of this Rule 1740 adopted May 16, 1979, effective September 30, 1979, 9 Pa.B. 1740.

**Rule 1751. Form of Bond.**

A bond under this chapter may be in substantially the following form:

(Caption)

Appellant, having appealed from an order of the Court of Common Pleas of \_\_\_\_\_ County [or “of the \_\_\_\_ Judicial District”], entered in this matter on the \_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_, and having procured the execution of this instrument for the purpose of complying with the Pennsylvania Rules of Appellate Procedure, the undersigned surety acknowledges itself bound and indebted to the Commonwealth of Pennsylvania, for the use of the persons or parties entitled thereto, in the sum of \_\_\_\_\_ dollars (\$ \_\_\_\_\_), to be paid as required by law.

Upon conclusion of this matter, if the appellant satisfies the above identified order or any court order modifying or affirming that order and pays all costs, interest and damages for delay that may be awarded, this obligation shall be void; otherwise, it shall remain in force.

Date \_\_\_\_\_

\_\_\_\_\_  
(Name of Surety)

By \_\_\_\_\_  
(Name and Title of Authorized signatory)

**Official Note:** Patterned after 20 Pa.C.S. § 7111(c)(2) (condition of bond).

**Source**

The provisions of this Rule 1751 amended July 7, 1997, effective in 60 days, 27 Pa.B. 3503. Immediately preceding text appears at serial page (124451).



## STAY IN CRIMINAL MATTERS

**Rule 1761. Capital cases.**

The pendency of proceedings under Rule 1941 (review of sentence of death) shall stay execution of sentence of death.

**Official Note:** Based on 42 Pa.C.S. § 9711(h) (review of death sentence).

**Source**

The provisions of this Rule 1761 amended through April 26, 1982, effective September 12, 1982, 12 Pa.B. 1536. Immediately preceding text appears at serial page (43024).

**Rule 1762. Release in Criminal Matters.**

(a) *Bail when an appeal is pending*—Applications relating to bail when an appeal is pending shall ordinarily first be presented to the trial court and shall be governed by the Pennsylvania Rules of Criminal Procedure. If the trial court denies relief, a party may seek relief in the appellate court by filing an application, pursuant to Pa.R.A.P. 123, ancillary to the pending appeal.

(b) *Bail when no appeal is pending*—Applications relating to bail when no appeal is pending:

(1) Applications relating to bail when no appeal is pending shall first be presented to the trial court and shall be governed by the Pennsylvania Rules of Criminal Procedure.

(2) An order relating to bail shall be subject to review pursuant to Chapter 16.

(c) *Entry of Bail*—Bail shall be entered in the trial court pursuant to the Pennsylvania Rules of Criminal Procedure.

(d) *Extradition matters*—Relief relating to bail in extradition matters shall be governed by the procedures prescribed by this rule.

(e) *Opinion of trial court*—Upon receipt of a copy of an application for relief under paragraph (a) or a petition for specialized review under paragraph (b) that does not include an explanation for the bail determination, the judge who made the bail determination being reviewed shall forthwith file of record a brief statement of the reasons for the determination or where in the record such reasons may be found.

**Source**

The provisions of this Rule 1762 amended December 11, 1978, effective December 30, 1978, 8 Pa.B. 3802; amended May 16, 1979, effective September 30, 1979, 9 Pa.B. 1740; amended July 8, 2004, effective 60 days after adoption, 34 Pa.B. 3870; amended January 7, 2020, effective August 1, 2020, 50 Pa.B. 505. Immediately preceding text appears at serial pages (389977) to (389978).

**Rule 1763. Vacation of Supersedeas on Affirmance of Conviction.**

Unless otherwise ordered pursuant to this chapter, upon the remand of the record in any matter in which the judgment of sentence was affirmed a defendant who has been released pending appeal shall appear in the lower court at such time as the defendant may be there called, and shall be committed by that court until the defendant has complied with the original sentence, or any part thereof which had not been performed at the time the defendant was released pending appeal.

**Official Note:** This rule is based on the prior practice in the Superior Court and will simplify the wording of *per curiam* affirmance orders.

**Rule 1764. Other Stays in Criminal Matters.**

Except as otherwise prescribed by the Pennsylvania Rules of Criminal Procedure, Rule 1731 (automatic supersedeas of orders for the payment of money) et seq. shall be applicable to criminal or quasi-criminal matters or orders relating thereto which are not within the scope of Rule 1761 (capital cases) through Rule 1763 (vacation of supersedeas on affirmance of conviction).

**Rule 1770. (Reserved).**

**Official Note:** Pa.R.A.P. 1770 formerly provided for a petition for review of an out-of-home placement in juvenile delinquency matters. The substance of that rule is now found in Pa.R.A.P. 1612.

**Source**

The provisions of this Rule 1770 adopted December 10, 2012, effective in 60 days, 42 Pa.B. 7813; amended January 5, 2018, effective January 6, 2018, 48 Pa.B. 461; amended January 7, 2020, effective August 1, 2020, 50 Pa.B. 505. Immediately preceding text appears at serial pages (389978) and (395769) to (395770).

**STAY PENDING ACTION ON PETITION FOR REVIEW****Rule 1781. Stay Pending Action on Petition for Review or Petition for Specialized Review.**

(a) *Application to government unit.*—Application for a stay or supersedeas of an order or other determination of any government unit pending review in an appellate court on petition for review or petition for specialized review shall ordinarily be made in the first instance to the government unit.

(b) *Contents of application for stay or supersedeas.*—An application for stay or supersedeas of an order or other determination of a government unit, or for an order granting an injunction pending review, or for relief in the nature of peremptory mandamus, may be made to the appellate court or to a judge thereof, but the application shall show that application to the government unit for the relief sought is not practicable, or that application has been made to the government unit and denied, with the reasons given by it for the denial, or that the action of the government unit did not afford the relief that the applicant had requested. The application shall also show the reasons for the relief requested and the facts relied upon, and if the facts are subject to dispute, the application shall be supported by sworn or verified statements or copies thereof. With the application shall be filed



such parts, if any, of the record as are relevant to the relief sought. The application shall contain the certificate of compliance required by Pa.R.A.P. 127.

(c) *Notice and action by court.*—Upon such notice to the government unit as is required by Pa.R.A.P. 123, the appellate court, or a judge thereof, may grant an order of stay or *supersedeas*, including the grant of an injunction pending review or relief in the nature of peremptory mandamus, upon such terms and conditions, including the filing of security, as the court or the judge thereof may prescribe. Where a statute requires that security be filed as a condition to obtaining a *supersedeas*, the court shall require adequate security.

**Official Note:** See generally *Pennsylvania Public Utility Commission v. Process Gas Consumers Group*, 467 A.2d 805 (Pa. 1983), for the criteria for the issuance of a stay pending appeal.

**Source**

The provisions of this Rule 1781 amended through April 26, 1982, effective September 12, 1982, 12 Pa.B. 1536; amended January 5, 2018, effective January 6, 2018, 48 Pa.B. 461; amended February 8, 2019, effective April 1, 2019, 49 Pa.B. 832; amended January 7, 2020, effective August 1, 2020, 50 Pa.B. 505. Immediately preceding text appears at serial pages (395770) to (395771).

**Rule 1782. Security on Review in Tax Matters.**

(a) *General Rule.*—A petition for review of an order of the Board of Finance and Revenue in a tax matter shall, unless otherwise ordered pursuant to this chapter, operate as a *supersedeas* upon the filing with the Prothonotary of the Commonwealth Court of appropriate security in the amount of 120% of the amount of taxes and penalty found due by the Board and remaining unpaid.

(b) *Form of bond.*—A bond under this rule may be in substantially the following form:

[Caption]

Petitioner, having sought review of an order of the Board of Finance and Revenue entered (or deemed entered) in this matter on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, and having procured the execution of this instrument for the purpose of complying with the Pennsylvania Rules of Appellate Procedure, the undersigned surety acknowledges itself bound and indebted to the Commonwealth of Pennsylvania in the amount of \$( \_\_\_\_\_ ), which is 120% of the sum of \$ \_\_\_\_\_ (taxes found due) and \$( \_\_\_\_\_ ) (penalty found due), the amount of taxes and penalty found due by the Board and remaining unpaid in this matter, to be paid as required by law.

Upon conclusion of this matter, if the petitioner satisfies the above identified order or any court order modifying or affirming that order and pays all costs, interest and any damages for delay that may be awarded, this obligation shall be void; otherwise it shall remain in full force.

Date \_\_\_\_\_

\_\_\_\_\_  
(Name of Surety)

By \_\_\_\_\_  
(Name and Title of Authorized Signatory)

## 210 Rule 1782

## RULES OF APPELLATE PROCEDURE

*Note:* The requirement of a bond for costs only (as where the full amount of the tax found due below has already been paid) has been eliminated.

**Official Note:** The requirement of a bond for costs only (as where the full amount of the tax found due below has already been paid) has been eliminated.

### Source

The provisions of this Rule 1782 amended through April 26, 1982, effective September 12, 1982, 12 Pa.B. 1536; amended July 7, 1997, effective in 60 days, 27 Pa.B. 3503. Immediately preceding text appears at serial pages (124454) to (124455).

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