

§3.B.00 | ANCILLARY RELIEF – STAYS⁷⁰

A request for stay pending review involves an issue that ordinarily is presented in the lower tribunal before it is considered by the reviewing court.⁷¹ Rule 9.310(a) states that the lower tribunal “shall have continuing jurisdiction, in its discretion, to grant, modify, or deny such relief.”⁷² If issuance of the stay is discretionary, the proper procedure is to file the motion in the lower tribunal. The order entered on the motion is then reviewable simply by filing a motion for review in the case pending before the appellate court.⁷³

There are two situations in which a stay is imposed automatically and without the need for a motion in the lower tribunal. First, a party who has appealed a judgment that is solely for the payment of money may obtain a stay of execution of the judgment under Rule 9.310(b)(1) by posting a bond with the clerk of the lower tribunal in the total amount of the judgment plus two years’ interest at the statutory rate.⁷⁴ If the bond is posted in the correct amount, the stay is automatic.⁷⁵ The trial judge has no discretion to require the appellant to post a bond in a higher or lower amount.⁷⁶

Second, a motion for stay also is unnecessary if the party appealing the judgment is a public officer or a public body. This exception is based on a presumption that a public litigant will be able to pay the judgment if the appeal is not successful. When an appeal is filed by a public officer or public body, the filing of the notice of appeal automatically stays the judgment.⁷⁷ The opposing party may file a motion in the lower tribunal to vacate the automatic stay, but the lower tribunal may vacate properly an automatic stay in an appeal by a public litigant only in compelling circumstances. The party moving to vacate the stay has the burden of establishing an evidentiary basis for the alleged compelling circumstances.⁷⁸

Although a motion for a stay pending review should be directed to the lower tribunal initially, the appellate court has inherent authority to issue a stay pending review, even if the motion is presented for the first time on appeal.⁷⁹

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Footnotes

⁷⁰. See *id.* at ch. 12 for the source of the material that is adapted in this Subsection.

⁷¹. The procedure for obtaining a stay pending review is to file a motion in the lower tribunal. Fla. R. App. P. 9.310(a). A special procedure applies if a party is seeking a stay of an administrative order. *Id.* 9.190(e)(2)(A).

⁷². *Id.* 9.310(a).

⁷³. *Id.* 9.130(f).

⁷⁴. *Id.* 9.310(b)(1); Waller v. DSA Group, Inc., 606 S.2d 1234, 1235 (Fla. Dist. App. 2d 1992); Wilson v. Woodward, 602 S.2d 545, 546–547 (Fla. Dist. App. 2d 1991).

⁷⁵. Hollo v. N. Trust Bank of Fla., N.A., 562 S.2d 730, 731 (Fla. Dist. App. 3d 1990); Taplin v. Salamone, 422 S.2d 92, 93 (Fla. Dist. App. 4th 1982).

⁷⁶. Mellon United Natl. Bank v. Cochran, 776 S.2d 964, 964 (Fla. Dist. App. 3d 2000); Campbell v. Jones, 648 S.2d 208, 209 (Fla. Dist. App. 3d 1994); Proprietors Ins. Co. v. Valsecchi, 385 S.2d 749, 751 (Fla. Dist. App. 3d 1980).

⁷⁷. Fla. R. App. P. 9.310(b)(2); City of Delray Beach v. White, 616 S.2d 602, 602 (Fla. Dist. App. 4th 1993); Navarro v. Bouffard, 522 S.2d 515, 517 (Fla. Dist. App. 4th 1988).

⁷⁸. Dept. of Env'tl. Protection v. Pringle, 707 S.2d 387, 390 (Fla. Dist. App. 1st 1998); St. Lucie County v. N. Palm Dev. Corp., 444 S.2d 1133, 1135 (Fla. Dist. App. 4th 1984).

⁷⁹. See Perez v. Perez, 769 S.2d 389, 393 (Fla. Dist. App. 3d 1999) (granting a stay filed directly in the appellate court without mentioning the motion and review procedures in Rule 9.310(a)–(f)).