

Memorandum



To: Supreme Court Advisory Committee

From: Appellate Rules Subcommittee

Date: August 15, 2020

Re: May 18 Referral Relating to TRAP 24.1(b)(2) Approval of Supersedeas Bond

I. Matter referred to subcommittee

The Court's May 18, 2020 referral letter and Chairman Babcock's May 20 letter refer the following matter to our committee:

Texas Rule of Appellate Procedure 24.1(b)(2). Rule 24.1(b)(2) requires a supersedeas bond to "be approved by the trial court clerk." Some practitioners have reported issues getting clerks to approve supersedeas bonds, and some clerks have reported that it is not clear how to determine whether a bond should be approved. Please draft appropriate amendments for the Court's consideration.

II. Relevant rules

TRAPs 24.1 governs the filing of a supersedeas bond and is quoted in full in Appendix A. The Court's referral letter is directed to TRAP 24.1(b)(2), which requires the trial court clerk to approve a supersedeas bond for it to be effective:

24.1. Suspension of Enforcement

(b) *Bonds.*

(1) A bond must be:

- (A) in the amount required by 24.2;
- (B) payable to the judgment creditor;
- (C) signed by the judgment debtor or the debtor's agent;
- (D) signed by a sufficient surety or sureties as obligors; and
- (E) conditioned as required by (d).

(2) **To be effective a bond must be approved by the trial court clerk. On motion of any party, the trial court will review the bond.**

III. Recommendation

For a number of reasons discussed more fully in this memo, the subcommittee recommends that the rule be amended as follow:

24.1. Suspension of Enforcement

(b) *Bonds.*

(1) A bond must be:

- (A) in the amount required by 24.2;
- (B) payable to the judgment creditor;
- (C) signed by the judgment debtor or the debtor's agent;
- (D) signed by a sufficient surety or sureties as obligors; and
- (E) conditioned as required by (d).

(2) ~~To be effective a bond must be approved by the trial court clerk~~ A bond is effective upon filing. On motion of any party, the trial court will review the bond.

IV. Relevant materials

No materials were provided with the referral. The subcommittee contacted Jaclyn Daumerie, the court rules attorney, to get more information on the source of comments from practitioners and clerks on the topic.

She referred the subcommittee to appellate practitioner Reagan Simpson at Yetter Coleman, who was very helpful and submitted a letter outlining problems he has encountered in getting supersedeas bonds approved in rural counties. A copy of Reagan's letter is attached as Appendix B. In the letter, Reagan describes some of the difficulties he has encountered in getting bonds timely approved by clerks in rural counties that have delayed prompt issuance of the bond, such as requesting two bonds rather than one, delaying approval until the clerk first conferenced with the trial court, and even having to threaten mandamus action. He offered two alternative suggestions for resolving the problem: requiring the trial court rather than the clerk to approve the bond, as is the practice in federal courts; or no longer require approval by the clerk and instead have the bond effective upon receipt.

Jaclyn also shared with the subcommittee emails from Sharena Gilliland, SCAC member and District Clerk of Parker County, and from Nancy Rister, District Clerk of Williamson County. Those emails are attached as Appendix C. Ms. Gilliland, in response to an email from the court rules attorney, questioned whether clerk approval is necessary: "Is there any reason the bond has to be approved? Honestly, there is not really a good method other than a Google search to see if the surety is real. Is it sufficient if the bond is filed with the clerk and no approval by anyone necessary?" Ms. Rister added to the discussion: "On surety bonds our judge approves. We accept cash for them but no one looks up info on the sureties. Wording [of rule] should be changed. How about 'accepted' not 'approved'?" In

a reply email, Ms. Gilliland agreed with the approach that a supersedeas bond could be effective on filing, leaving it to the lawyers to advocate to the trial court, if necessary, that the bond is not compliant.

The subcommittee also was able to obtain, with the kind assistance of Justice Tracy Christopher, a copy of the written procedures the district clerk's office in Harris County follows in approving supersedeas bonds. The procedures are attached as Appendix D. The procedures are very detailed, but there are 8 key steps listed for the approval part of the process:

A. Approve the bond by ensuring that the following information is included and correct:

1. Signature of attorney-in-fact (attorney that signed the bond) representing the surety.
2. Power of Attorney page with attorney-in-fact listed as having the authority to execute on behalf of the surety company.
3. Signature of officer affixing the corporate seal of surety on the Power of Attorney page.
4. Signature of the notary public.
5. Seals (raised or printed) for both the signature page of surety bond and the Power of Attorney page.
6. Approved licensed Surety: Note: Check in the Federal Register's Department of the Treasury's Listing of Approved Sureties (Department Circular 570) to see if the company is listed to cover the amount and is licensed to do business in the State of Texas. If the amount of the bond is in excess of 10 percent of the surety's company capital, written certification will be required from a re-insurer that is authorized to do business in the State of Texas.
7. Bond amount - if no Court order setting the bond, bond will be calculated based on the judgment. When the judgment is for money, the amount of the bond must equal the sum of compensatory damages awarded in the judgment, interest for the estimated duration for the appeal (1 year), and costs awarded in the judgment. The interest rate of 5% is used unless the judgment specifies a specific rate. Refer to calculation formula located in the G:\Supersedeas formula. Do not approve the bond if the amount is insufficient.
8. Upon approval, stamp "Approved" stamp on signature page.

The reference to the G formula is a spreadsheet that adds the components of compensatory damages and calculates on year of interest. The G formula worksheet is attached as part of Appendix D.

Not all clerk's office throughout the state have detailed procedures like those in Harris County. Many appear to rely solely on the rules and statutes for guidance.

V. Discussion

Approval of supersedeas bonds has been the responsibility of the clerk since the late 1800s. *See* Tex. Rev. Civ. Stat. art. 2270 (Vernon 1936, citing predecessor 1892 General Law) ("An appellant or plaintiff in error, desiring to suspend the execution of the judgment may do so by giving a good and

sufficient bond to be approved by the clerk...”). These historical statutes “have been interpreted as vesting in the court clerk the discretion of judicial character in passing on the sufficiency of a supersedeas bond, which includes passing on the financial worth of the sureties.” *Ruiz v. Watkins*, 701 S.W.2d 688, 690 (Tex. App.—Amarillo 1985, no writ) (citations omitted).

The “discretion of judicial character” vested in the clerk is not unlimited. The clerk has a ministerial duty to approve a compliant supersedeas bond. *Miller v. Kennedy & Minshew, P.C.*, 80 S.W.3d 161, 165 (Tex. App.—Fort Worth 2002, pet. denied). Mandamus will issue when the clerk has abused that discretion in refusing to approve a compliant bond. *Ruiz*, 701 S.W.2d at 691. Cases analyzing whether the clerk’s discretion was abused show the difficulties clerks face in fulfilling their judicial function. *Compare id.* at 691 (clerk clearly abused discretion in refusing to approve bond when verified documents “clearly and unequivocally” demonstrated the sufficiency of the sureties), *with In re Moore*, No. 07-06-00046-CV (Tex. App.—Amarillo 2006) (clerk did not abuse discretion in refusing to approve bond when documents provided did not clearly establish sufficiency of sureties).

The input from District Clerks Gilliland and Rister reflect that the clerks may be uncomfortable with being vested with discretion of a judicial character in approving a supersedeas bond. App. C. They suggest that the clerk should merely accept the bond rather than approve it, leaving any objections about the amount or sufficiency of the sureties for the parties to subsequently present to the trial court for determination. That procedure is already in place when a party files a net-worth affidavit to establish the amount of the bond. TRAP 24.2(c). The clerk must accept and file the affidavit; any contest must be presented to the trial court. *Id.* It should also be noted that when a party files a cash deposit in lieu of bond, there is no similar requirement that the clerk “approve” the deposit. TRAP 24.1(c).

But having all bonds be effective upon filing may give rise to gamesmanship where a party files what is essentially a “junk” bond to buy time to move assets and avoid execution. That is already a risk when a “junk” net worth affidavit is filed. Rule 24.2(d) provides that a judgment creditor may seek an injunction to bar the judgment debtor from dissipating or transferring assets outside the ordinary course of business to evade satisfaction of the judgment. There remains a question of whether the risk of “junk” bond filings is an acceptable risk, and whether additional safeguards – like sanctions – should be put in place to deter a party’s abuse of the procedure.

Reagan Simpson proposes that the supersedeas bond approval process be by the trial court in all cases, which is the practice in federal court. But the problems he has encountered in a few counties appear to be the exception rather than the rule. The approval process is certainly working smoothly in large counties like Harris County. The trial courts should not be burdened with approving bonds in all cases to cure a few outliers. Plus, depending on the trial court’s schedule, obtaining a hearing and approval may further slow some of the bonds. Rather than having the trial court approve all bonds, maybe the rule could be altered to permit the party filing the bond – at its option – to obtain approval from the trial court rather than the clerk.

Another route would be to state more clearly in the rule the clerk's obligations to review the bond and what specifically is needed for approval. The rule could track the steps set out in the Harris County guidelines. This would eliminate the judicial nature of the clerk's discretion and make the practice uniform across the state.

VI. Alternatives

There are a number of options:

- Leave the rule as is because it is working in most cases.
- Amend the rule to require the trial court judge to approve the bond in all cases.
- Amend the rule to permit the party filing the bond at its option to skip clerk approval and ask the trial court to approve the bond.
- Amend the rule so that the clerk "accepts" rather than "approves" the bond so that all bonds are effective upon filing; any complaints go to the trial court.
- Amend the rule so that clerk accepts but add a new sanction for bad-faith bonds.
- Amend the rule to delineate the specific items required for bond approval similar to those in Harris County.

VII. Subcommittee Discussion and Recommendation

The subcommittee discussed the pros and cons of each of the options listed above. The subcommittee members agreed that supersedeas bond practice should be uniform across all the districts and counties of the state. Because the practice is not currently uniform, the subcommittee believes the rule should be changed. The subcommittee did not think the trial court should have to approve all supersedeas bonds because of the additional time and work involved. The subcommittee recommends that the rule be changed to make bonds effective on filing with the judgment creditor able to take any challenges to the trial court judge because:

- (1) trial court clerks should not be exercising judicial discretion;
- (2) file and challenge is currently the method for cash deposits and net worth affidavits;
- (3) the practice would be simple and uniform; and
- (4) in those cases involving gamesmanship, judgment creditors have other options available to protect the ability to collect on the judgment. :

The subcommittee further discussed whether an additional sanctions rule should be drafted and made part of TRAP 24.1. The subcommittee was reluctant to invite ancillary litigation over sanctions but agreed that issue should be revisited if the rule change results in abuse of the supersedeas bond process.

The subcommittee recommends that the rule be amended as follow:

24.1. Suspension of Enforcement

(b) *Bonds.*

(1) A bond must be:

- (A) in the amount required by 24.2;
- (B) payable to the judgment creditor;
- (C) signed by the judgment debtor or the debtor's agent;
- (D) signed by a sufficient surety or sureties as obligors; and
- (E) conditioned as required by (d).

(2) ~~To be effective a bond must be approved by the trial court clerk~~ A bond is effective upon filing. On motion of any party, the trial court will review the bond.

Appendix A: TRAP 24.1

24.1. Suspension of Enforcement

(a) *Methods.* Unless the law or these rules provide otherwise, a judgment debtor may supersede the judgment by:

- (1) filing with the trial court clerk a written agreement with the judgment creditor for suspending enforcement of the judgment;
- (2) filing with the trial court clerk a good and sufficient bond;
- (3) making a deposit with the trial court clerk in lieu of a bond; or
- (4) providing alternate security ordered by the court.

(b) *Bonds.*

- (1) A bond must be:
 - (A) in the amount required by 24.2;
 - (B) payable to the judgment creditor;
 - (C) signed by the judgment debtor or the debtor's agent;
 - (D) signed by a sufficient surety or sureties as obligors; and
 - (E) conditioned as required by (d).
- (2) To be effective a bond must be approved by the trial court clerk. On motion of any party, the trial court will review the bond.

(c) *Deposit in Lieu of Bond.*

- (1) Types of Deposits. Instead of filing a surety bond, a party may deposit with the trial court clerk:
 - (A) cash;
 - (B) a cashier's check payable to the clerk, drawn on any federally insured and federally or state- chartered bank or savings-and-loan association; or
 - (C) with leave of court, a negotiable obligation of the federal government or of any federally insured and federally or state- chartered bank or savings-and-loan association.
- (2) Amount of Deposit. The deposit must be in the amount required by 24.2.
- (3) Clerk's Duties; Interest. The clerk must promptly deposit any cash or a cashier's check in accordance with law. The clerk must hold the deposit until the conditions of liability in (d) are extinguished. The clerk must then release any remaining funds in the deposit to the judgment debtor.

(d) *Conditions of Liability.* The surety or sureties on a bond, any deposit in lieu of a bond, or any alternate security ordered by the court is subject to liability for all damages and costs that may be awarded against the debtor — up to the amount of the bond, deposit, or security — if:

- (1) the debtor does not perfect an appeal or the debtor's appeal is dismissed, and the debtor does not perform the trial court's judgment;

- (2) the debtor does not perform an adverse judgment final on appeal; or
- (3) the judgment is for the recovery of an interest in real or personal property, and the debtor does not pay the creditor the value of the property interest's rent or revenue during the pendency of the appeal.

(e) *Orders of Trial Court.* The trial court may make any order necessary to adequately protect the judgment creditor against loss or damage that the appeal might cause.

(f) *Effect of Supersedeas.* Enforcement of a judgment must be suspended if the judgment is superseded. Enforcement begun before the judgment is superseded must cease when the judgment is superseded. If execution has been issued, the clerk will promptly issue a writ of supersedeas.

Appendix B

YetterColeman LLP

July 10, 2020

Via Email Only to psbaron@baroncounsel.com

Re: Approval Process of Supersedeas Bonds

Pamela Stanton Baron
Chair, Subcommittee on Appellate Rules
Supreme Court Advisory Committee

Dear Pam:

I appreciate the opportunity to express to the Rules Subcommittee my concerns about the current process for approving supersedeas bonds.

To summarize why I recommend a change in the procedure, in rural counties, district clerks may not be familiar with the bond-approval process, and their unfamiliarity can pose problems for a party attempting to prevent execution by filing a timely supersedeas bond. As you know, not filing a timely bond can result in the execution on the property of an individual or a business. I am aware of examples of late-filed bonds that led to seizures of property of businesses that seriously disrupted their operations.

I have myself experienced several problems with the process of filing and getting approval of supersedeas bonds in rural counties. I will not identify the district clerks who have created problems for me and my clients, because they are all hard-working clerks who simply are not aware of the procedures. Unlike metropolitan clerks, they rarely confront supersedeas bond issues and almost never deal with multi-million-dollar bonds like the ones I have filed.

In one county, the clerk insisted that we post two good and sufficient supersedeas bonds, apparently in reliance on the procedures for posting bonds to support temporary relief. Texas Rule of Civil Procedure 684 states, with emphasis added: "Before the issuance of the temporary restraining order or temporary injunction the applicant shall execute and file with the clerk a bond to the adverse party, with *two or more good and sufficient sureties*, to be approved by the clerk, in the sum fixed by the judge." I happen to know that two sureties will not sign the same bond, which then leads to a requirement of two bonds if Rule 684 is followed. I also know that at least one metropolitan district clerk, aware of that fact, requires only one bond to support temporary relief.

In the case where the district clerk was requiring two supersedeas bonds, the judgment was in excess of the \$25 million maximum for supersedeas bonds, so I was being asked to file two \$25 million bonds. Filing \$50 million in bonds was, of course, contrary to the bonding cap set by the Legislature, and my client was a Fortune 100 company that could easily pay the full judgment. I was never able to talk with the clerk herself about this. When her deputy clerks kept insisting on two bonds, I got an extension of time to file the bond from the opposing party. Ultimately, I had to threaten a mandamus proceeding before the clerk relented and signed the bond.

July 10, 2020

That situation illustrates another problem with resting the approval process in the district clerk's office. Understandably, in some district clerk offices, it is hard to get an audience with *the* district clerk. Deputy clerks, I am sure, are instructed to handle normal operations, and the elected clerk does not have time to deal with all such issues. Thus, while I can always get a hearing before a judge, it is not always easy to talk to the elected district clerk.

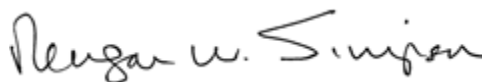
The other problem I have experienced is the belief by district clerks that the bond should be approved by the judge. Very recently, I experienced that problem in a very small county that I am sure had never seen a judgment of the size I was appealing for a client. Without going into details, mis-delivery of the bond caused a time crunch for me. The judgment was against a relatively small company that had substantial physical assets necessary to its operations. The clerk said she had to get approval from the judge, who was in trial in another county. I sent her a copy of the rule showing that the approval came from the clerk, but that did not solve the problem. Fortunately, after several calls to the clerk's office, the clerk was able to get in touch with the judge and get his approval to the bond in time, the amount of which had been approved by the opposing appellate lawyer in a document I had filed early on.

I had another less difficult situation in a mid-size county. Again, I spoke with deputy clerks who thought the bond approval was a matter for the judge. In this case, I was dealing with a small company that had a judgment against it far above its insurance limits and far above its net worth. We filed a net worth affidavit, which may have been a novel issue for the clerk's office. After many calls, I finally got the clerk to sign the bond, although I would not be surprised if the clerk actually sought approval from the trial judge.

To my way of thinking, lawyers should not face such obstacles in this important process. One solution might be to put the approval process in the hands of the trial judge. Lawyers can always get hearings before a judge. Another solution would be to do away with the approval process altogether. Allow the bond to be effective upon filing, with any complaint about the bond to be raised by motion filed by the judgment creditor with the trial court and decided on an expedited basis.

Thank you again for considering these recommendations. If I can provide any further information or answer any questions, please do not hesitate to let me know.

Very truly yours,



Reagan W. Simpson

RWS/

Appendix ?

RE: Rules Complaint- Supersedeas Bonds (TRAP 24)

Nancy Rister <nrister@wilco.org>

Thu 11/14/2019 10:42 AM

To: Sharena Gilliland <Sharena.Gilliland@parkercountytx.com>; Jaclyn Daumerie <Jaclyn.Daumerie@txcourts.gov>

On surety bonds our judge approves. We accept cash for them but no one looks up info on sureties. Wording should be changed. How about "accepted" not "approved"?

(2) To be effective a bond must be approved by the trial court clerk. On motion of any party, the trial court will review the bond.

Nancy E. Rister

Nancy E. Rister
Williamson County Clerk
 405 MLK Suite 203
 Georgetown TX 78626



A thousand may fall at your side and ten thousand at your right hand, but it shall not approach you. Psalm 91:7

No evil will befall you, nor will any plague come near your tent. For He will give His angels charge concerning you,
 to guard you in all your ways. Psalm 91:10-11

From: Sharena Gilliland <Sharena.Gilliland@parkercountytx.com>

Sent: Wednesday, November 13, 2019 4:59 PM

To: Jaclyn Daumerie <Jaclyn.Daumerie@txcourts.gov>; Nancy Rister <nrister@wilco.org>

Subject: RE: Rules Complaint- Supersedeas Bonds (TRAP 24)

EXTERNAL email: Exercise caution when opening.

RE: Rules Complaint- Supersedeas Bonds (TRAP 24)

Sharena Gilliland <Sharena.Gilliland@parkercountytexas.com>

Thu 11/14/2019 10:59 AM

To: Jaclyn Daumerie <Jaclyn.Daumerie@txcourts.gov>; Nancy Rister <nrister@wilco.org>

Yes, as to your last question. I was pondering whether a file-marked copy would be sufficient to stop the execution of a judgment.

If not, are they needing a formal certification from the clerk that they can use to show law enforcement, etc. who might otherwise have received writs of execution? Sometimes people want a formal certificate that spells out the party checked all of the boxes. And if a certification is wanted that says judgment debtor posted a bond in compliance with TRAP 24, does it need to also spell out the judgment creditor cannot continue with execution?

Sharena Gilliland

Parker County District Clerk

117 Fort Worth Highway

Weatherford, Texas 76086

(817) 598-6114

(817) 598-6131 - Fax

Sharena.Gilliland@Parkercountytexas.com

From: Jaclyn Daumerie [mailto:Jaclyn.Daumerie@txcourts.gov]**Sent:** Thursday, November 14, 2019 10:47 AM**To:** Sharena Gilliland; Nancy Rister**Subject:** RE: Rules Complaint- Supersedeas Bonds (TRAP 24)

Thanks for your thoughtful comments, Sharena. I agree with you regarding “approve.” I admittedly have no real experience with supersedeas, and “approve” caused me pause. How does a clerk approve—by signature, stamp, etc.? How does a clerk know to approve? Some research led me to *Miller v. Kennedy & Minshew, P.C.*, where the Fort Worth COA held that a “district clerk possess a ministerial duty to approve a supersedeas bond that complies with rule 24.1(b).” But it would certainly be easier if we spelled it out.

I also think you raised an interesting question about whether approval is even necessary. Are you thinking, as an alternative approach, that perhaps a supersedeas bond could be effective on filing, then we leave it up to the lawyers to advocate, if necessary, why it shouldn't be?

Jackie

From: Sharena Gilliland [mailto:Sharena.Gilliland@parkercountytexas.com]**Sent:** Thursday, November 14, 2019 10:07 AM**To:** Jaclyn Daumerie <Jaclyn.Daumerie@txcourts.gov>; Nancy Rister <nrister@wilco.org>**Subject:** RE: Rules Complaint- Supersedeas Bonds (TRAP 24)

Good morning,

I was thinking about this issue last night.

If the party is needing something to show that they have posted a supersedeas bond and stop any efforts at collection, I understand the need for the clerk to issue immediately rather than wait for the judge to have time to review it.

I still think the problem lies with the word “approve.” I’m wondering if a change is needed, if something along the lines of a certification by the clerk that the bond meets the requirements of 24.1(b) would help move things along more quickly.

Sharena Gilliland

Parker County District Clerk

117 Fort Worth Highway

Weatherford, Texas 76086

(817) 598-6114

(817) 598-6131 - Fax

Sharena.Gilliland@Parkercountytx.com

From: Jaclyn Daumerie [<mailto:Jaclyn.Daumerie@txcourts.gov>]

Sent: Wednesday, November 13, 2019 4:53 PM

To: Sharena Gilliland; Nancy Rister

Subject: Rules Complaint- Supersedeas Bonds (TRAP 24)

Good evening, Sharena and Nancy,

I got a call from an attorney with a rules complaint, and I’d like to get your take.

The attorney has had problems getting clerks—specifically clerks in rural counties—to do what they’re supposed to do to approve a supersedeas bond. In the most recent instance, the judge said she can’t sign the bond unless the clerk approves. And, in the past, the attorney has had to threaten mandamus to get a clerk to approve a bond. Anyway, he says he’s constantly worried about this because his clients’ property could be seized if he can’t get approval, and he thinks there should be a rules change. Specifically, he thinks the judge should be the one approving the bond.

I’d appreciate any thoughts you have on this suggestion.

Best,

Jackie Daumerie

Rules Attorney

Supreme Court of Texas

512.463.1353

jaclyn.daumerie@txcourts.gov

Very interesting. I've heard clerks question how do they know if they should approve the bond. TRAP 24.1(b)(2) does say on motion of any party the trial court can review the bond. But that may be the process that takes too long if the party has already requested the clerk approve and the clerk delays.

Is there any reason the bond has to be approved? Honestly, there is not really a good method other than a Google search to see if the surety is real.

Is it sufficient if the bond is filed with the clerk and no approval by anyone necessary?

Sharena Gilliland

Parker County District Clerk

117 Fort Worth Highway

Weatherford, Texas 76086

(817) 598-6114

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Sharena.Gilliland@Parkercountytx.com

From: Jaclyn Daumerie [<mailto:Jaclyn.Daumerie@txcourts.gov>]

Sent: Wednesday, November 13, 2019 4:53 PM

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Subject: Rules Complaint- Supersedeas Bonds (TRAP 24)

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The attorney has had problems getting clerks—specifically clerks in rural counties—to do what they're supposed to do to approve a supersedeas bond. In the most recent instance, the judge said she can't sign the bond unless the clerk approves. And, in the past, the attorney has had to threaten mandamus to get a clerk to approve a bond. Anyway, he says he's constantly worried about this because his clients' property could be seized if he can't get approval, and he thinks there should be a rules change. Specifically, he thinks the judge should be the one approving the bond.

I'd appreciate any thoughts you have on this suggestion.

Best,

Jackie Daumerie

Rules Attorney

Supreme Court of Texas

512.463.1353

jaclyn.daumerie@txcourts.gov

Appendix D



HARRIS COUNTY DISTRICT CLERK

STANDARD OPERATING PROCEDURES

Section: Civil Post Judgment	Date Issued: 08/22/97	Effective Date: 09/01/97	Procedure Number: 323/6.01
Category: Appeals	Date Revised: 5/1/06	Revision Number: 5	Page Number: 1 of 6
Subject: Supersedeas bonds			

Overview - When an appeal has been perfected or a Writ of Execution has been issued and the party wants to suspend execution of the judgment, a Supersedeas bond must be filed by the party and approved by the clerk. A judgment debtor may supersede the judgment by filing a Surety Bond (a prepared bond from a surety corporation which is insured to cover the bond for the entire judgment, plus interest and cost), Cash Deposit in lieu of a Surety bond (cash, a cashier's check or money order payable to the clerk for the entire judgment amount, interest and cost), or negotiable obligation (a negotiable obligation of the federal government or of any federally insured and federally or state-chartered bank or savings-and-loan association). When a judgment is for something other than money or an interest in property, the trial court must set the amount and type of security that the judgment debtor must post. The supersedeas bond should not be accepted and approved if the amount is insufficient.

Enforcement of a judgment must be suspended if the judgment is superseded. Enforcement begun before the judgment is superseded must cease when the judgment is superseded. If a Writ of Execution or Order of Sale has been issued, the clerk will promptly issue a Writ of Supersedeas. See SOP323/6.02

Procedure: Process the bond according to the type, as follows:

I. Surety Bond

- A. Approve the bond by ensuring that the following information is included and correct:
 1. Signature of attorney-in-fact (attorney that signed the bond) representing the surety.
 2. Power of Attorney page with attorney-in-fact listed as having the authority to execute on behalf of the surety company.
 3. Signature of officer affixing the corporate seal of surety on the Power of Attorney page.
 4. Signature of the notary public.
 5. Seals (raised or printed) for both the signature page of surety bond and the Power of Attorney page.

Reference: Rule 24. Suspension of Enforcement of Judgment Pending Appeal In Civil Cases of the Texas Rules of Appellate Procedure. Art. 7.19-1. Bond of Surety Company, Insurance Code; Rule 52.001 Civil Practice & Remedies Code; Insurance Code Chapter 3503.

Subject: Supersedeas Bond	Procedure Number: 323\ 6.01	Page Number: 2 of 6
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6. Approved licensed Surety: Note: Check in the Federal Register's Department of the Treasury's Listing of Approved Sureties (Department Circular 570) to see if the company is listed to cover the amount and is licensed to do business in the State of Texas. If the amount of the bond is in excess of 10 percent of the surety's company capital, written certification will be required from a re-insurer that is authorized to do business in the State of Texas.
 7. Bond amount – if no Court order setting the bond, bond will be calculated based on the judgment. When the judgment is for money, the amount of the bond must equal the sum of compensatory damages awarded in the judgment, interest for the estimated duration for the appeal (1 year), and costs awarded in the judgment. The interest rate of 5% is used unless the judgment specifies a specific rate. Refer to calculation formula located in the G:\Supersedeas formula. **Do not approve the bond if the amount is insufficient.**
 8. Upon approval, stamp "Approved" stamp on signature page.
- B. File mark bond
- C. Clerk will verify a bond approval fee has been pd. If not, clerk will assess fees in CATS, using fee code 116 for a \$4 bond approval fee. Have transaction validated and forward receipt to customer.
- D. Enter the bond on PST50.10 to the correct case number, completing the following fields:
1. Bond File Date – file date of bond
 2. Bond Type – H (Supersedeas) or T(amended sum of Supersedeas bond)
 3. Filed By–attorney bar number Note: If prose, indicate a Y in the PNO field
 4. Bond Amount – dollar amount of bond
 5. Bond Class Code –S (Surety)
 6. Surety – name of surety, if applicable
 7. Bond Approval Clerk – logon ID of approval clerk
 8. Bond Approval Date – date bond was approved
- E. Make one copy of bond and forward to person filing bond.
- F. Code Original Bond in top right corner, indicating the following:
1. "Super"
 2. P- (number of pages)
- G. Forward original bond to Imaging.
- H. Clerk will check INT71 and PST30.82 to ensure no Writ of Execution or Order of Sale has been requested or prepared. If one has been requested, it should be refunded and canceled. If one has been prepared, you will be required to prepare a Writ of Supersedeas, (SOP 323/6.02).

Reference: Rule 24. Suspension of Enforcement of Judgment Pending Appeal In Civil Cases of the Texas Rules of Appellate Procedure. Art. 7.19-1. Bond of Surety Company, Insurance Code; Rule 52.001 Civil Practice & Remedies Code;

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II. Cash Deposit In Lieu of Bond –

- A. Determine the bond amount – if no Court order setting the bond, bond will be calculated based on the judgment. When the judgment is for money, the amount of the bond must equal the sum of compensatory damages awarded in the judgment, interest for the estimated duration for the appeal (1 year), and costs awarded in the judgment. The interest rate of 10% is used unless the judgment specifies a specific rate. Refer to calculation formula located in the G:\Supersedeas formula.
- B. Clerk will prepare the Clerk's Certificate of Cash Deposit In Lieu of Supersedeas Bond by accessing the PJ-27 form, located in the G:\ drive, completing the following information: (See attached Appendix 1) and saving to the H drive.
 1. Cause Number.
 2. Full name of Appellant (the party who takes an appeal from the trial court to the appellate court).
 3. Full name of Appellee (the party in a case against whom an appeal is taken)
 4. Court of Jurisdiction.
 5. Written dollar amount of cash bond.
 6. Numeric dollar amount of cash bond
 7. Check number, if applicable. Note: If more than one check, include all check numbers)
 8. Name of Attorney or Party tendering the bond.
 9. Name of Appellant.
 10. Day bond is filed.
 11. Month bond is filed
 12. Day form prepared
 13. Month form prepared
 14. Name of deputy preparing the clerk's certificate.
 15. Appeal Court of Jurisdiction., if applicable
 16. Name and Address of Party filing the bond.
- C. Print, sign and seal Certificate
- D. Ensure the proper amount of cash is received
- E. Clerk will verify a bond approval fee has been pd. If not, clerk will assess fees in CATS, using fee code 116 for a \$4 bond approval fee. Have transaction validated and forward receipt to customer.
- F. Enter the bond on PST50.10 to the correct case number, completing the following fields:
 1. Bond File Date – file date of bond
 2. Bond Type – H (Supersedeas) or T (amended sum of Supersedeas)
 3. Filed By – attorney bar number Note: If prose, indicate a Y in the PNO field
 4. Bond Amount – dollar amount of bond
 5. Bond Class Code – C (Cash)
 6. Bond Approval Clerk – logon ID of approval clerk

Reference: Rule 24. Suspension of Enforcement of Judgment Pending Appeal In Civil Cases of the Texas Rules of Appellate Procedure. Art. 7.19-1. Bond of Surety Company, Insurance Code; Rule 52.001 Civil Practice & Remedies Code;

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7. Bond Approval Date – date bond was approved
 - G. Make two copies of the Certificate of Cash Deposit In Lieu of Supersedeas Bond.
 1. One to be delivered to the person filing bond
 2. Second copy to be delivered to Court Registry
 - H. Deliver the cash money and copy of Certificate to the Registry of the Courts, where you will sign the money over to that department. **For all cash, money orders, or cashier's check it will be imperative that you complete the bond log and have accounting sign for receipt of the monies.** The log book is maintained with the supersedeas bonds in the file room.
 - I. Code Original Certificate, in the top right, corner indicating the following:
 1. "Super"
 2. P- (number of pages)
 - J. Forward the Original Certificate of Cash Deposit In Lieu of Supersedeas Bond to Imaging.
 - K. Clerk will check INT71 and PST30.82 to ensure no Writ of Execution or Order of Sale has been requested or prepared. If one has been requested, it should be refunded and canceled. If one has been prepared, you will be required to prepare a Writ of Supersedeas, (SOP 323/6.02).
- III. **Negotiable Obligation**
- A. Receive negotiable obligation along with a Court order directing the deposit of these items as a Supersedeas Bond.
 - B. Filemark negotiable obligation and Court order.
 - C. Clerk will verify on INT62 or CATS that the \$4 bond-filing fee has been paid at intake. If not, direct requesting party to Intake for payment.
 - D. Enter the bond on PST50.10 to the correct case number, completing the following fields:
 1. Bond File Date – file date of bond
 2. Bond Type – H (Supersedeas) or T(amended sum of Supersedeas)
 3. Filed By – attorney bar number Note: If prose, indicate a Y in the PNO field
 4. Bond Amount – dollar amount of bond
 5. Bond Class Code – O (Other)
 6. Surety – name of negotiable obligator, if applicable
 7. Bond Approval Clerk – logon ID of approval clerk
 8. Bond Approval Date – date bond was approved
 - E. Make two copies of the Negotiable obligation and Court Order.
 - F. Deliver the original negotiable obligation and one copy of the court order to the Registry of the Courts, where you will sign the documents over to that department.

Reference: Rule 24. Suspension of Enforcement of Judgment Pending Appeal In Civil Cases of the Texas Rules of Appellate Procedure. Art. 7.19-1. Bond of Surety Company, Insurance Code; Rule 52.001 Civil Practice & Remedies Code;

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- G. Attach a copy of the negotiable obligation to the original court order and code the order, in the top right corner indicating the following:
1. "Super"
 2. P- (number of pages)
- H. Forward the coded documents to Imaging.
- I. Clerk will check INT71 and PST30.82 to ensure no Writ of Execution or Order of Sale has been requested or prepared. If one has been requested, it should be refunded and canceled. If one has been prepared, you will be required to prepare a Writ of Supersedeas, (SOP 323/6.02).

Reference: Rule 24. Suspension of Enforcement of Judgment Pending Appeal In Civil Cases of the Texas Rules of Appellate Procedure. Art. 7.19-1. Bond of Surety Company, Insurance Code; Rule 52.001 Civil Practice & Remedies Code;

Harris County G Formula

10% Interest Rate	Case Number:
Compensatory damages	
Compensatory damages	
Compensatory damages	
Costs	
subtotal	\$0.00
interest at 10% for one year	\$0.00
Total	\$0.00

UNLESS OTHERWISE SPECIFIED ALL CALCULATIONS PRIOR TO JUNE 20, 2003 SHOULD USE 10% INTEREST RATE

5% Interest Rate	Case Number:
Compensatory damages	
Compensatory damages	
Compensatory damages	
Costs	
subtotal	\$0.00
interest at 5% for one year	\$0.00
Total	\$0.00

UNLESS OTHERWISE SPECIFIED ALL CALCULATIONS AFTER JUNE 20, 2003 SHOULD USE 5% INTEREST RATE