

**SUPREME COURT OF PENNSYLVANIA
APPELLATE COURT PROCEDURAL RULES COMMITTEE**

NOTICE OF PROPOSED RULEMAKING

Proposed Amendment of Pa.R.A.P. 1737

The Appellate Court Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania the amendment of Pa.R.A.P. 1737 for the reasons set forth in the accompanying explanatory report. Pursuant to Pa.R.J.A. No. 103(a)(1), the proposal is being published in the Pennsylvania Bulletin for comments, suggestions, or objections prior to submission to the Supreme Court.

Any reports, notes, or comments in the proposal have been inserted by the Committee for the convenience of those using the rules. They will not constitute a part of the rules and will not be officially adopted by the Supreme Court.

Additions to the text of the proposal are bolded and underlined; deletions to the text are bolded and bracketed.

The Committee invites all interested persons to submit comments, suggestions, or objections in writing to:

**Appellate Court Procedural Rules Committee
Supreme Court of Pennsylvania
Pennsylvania Judicial Center
PO Box 62635
Harrisburg, PA 17106-2635
FAX: (717) 231-9551
appellaterules@pacourts.us**

All communications in reference to the proposal should be received by **December 1, 2015**. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

By the Appellate Court Procedural Rules Committee,
Honorable Renée Cohn Jubelirer
Chair

Explanatory Comment

There are four rules that in the first instance govern the setting of *supersedeas* or a stay of a trial court order during appeal: Pa.R.A.P. 1731, which sets the standard *supersedeas* amount of a money judgment at 120 percent of the verdict; Pa.R.A.P. 1732 and 1733, which together govern the setting of terms for superseding non-monetary relief during appeal; and Pa.R.A.P. 1736, which identifies those entities that are typically exempt from posting security on appeal. Other rules, such as Pa.R.A.P. 1734 and 1738, focus on the form or type of security.

By its terms, Pa.R.A.P. 1737 currently addresses objections under Pa.R.A.P. 1731 and 1736, and also provides a mechanism for correcting errors or updating sureties under Pa.R.A.P. 1734. The Committee believes that the rule may not be explicit enough about the options that are available to litigants to modify the terms of *supersedeas* of money judgments, such as for parties to agree to modify (including by eliminating) security; for an appellant to request alternatives other than the amount of security, such as payment of the 120 percent in two or more installments; and for an appellant to appeal a denial of a motion to adjust security. Accordingly, the Committee proposes to amend the title of the rule from “Objections to Security” to “Modification of Terms of *Supersedeas*” and to provide greater detail about the parties’ and trial court’s flexibility in both the rule and the note.

In addition, the current rule requires “cause shown” for all of the objections, and the Committee does not believe there is a reason to require “cause” for a person to substitute sureties or strike off improperly filed security. Accordingly, the Committee proposes to incorporate “cause shown” only in those provisions that warrant such a burden.

In drafting this proposal, the Committee recognized that there are very few published decisions addressing the modification of *supersedeas*, and it looks forward to hearing from the bench and bar whether the proposed amendment will adequately address the circumstances that are encountered with adjustments to *supersedeas* of money judgments.

Rule 1737. [Objections to Security.] Modification of Terms of *Supersedeas*

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

(1) **[R]**require security of a party otherwise exempt from the requirement of filing security [, **or increase, decrease or eliminate the amount of any security which has been or is to be filed.] upon cause shown;**

(2) **[S]**strike off security improperly filed[.];

(3) **[P]**permit the substitution of surety and enter an exoneration of the former surety[.]; **or**

(4) increase, decrease, 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. There may be circumstances, however, in which it would be appropriate for a court or the parties by agreement to modify the default approach to security, 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.