

MASSACHUSETTS RULES OF CIVIL PROCEDURE

Rule 65.1. Security: Proceedings Against a Security Provider

DRAFT Reporter's Notes--2019

Prior to amendment in 2019, the title of Rule 65.1 was “Security: Proceedings Against Sureties.” The 2019 amendments changed the title and the text of the rule to provide for enforcement proceedings against any security provider, rather than against only a surety.

Rule 62(b) allows a court to stay proceedings to enforce a judgment “upon such terms as to bond or otherwise as it considers proper.” Rule 62(c) allows a court to suspend or modify an injunction during the pendency of an appeal “upon such terms as to bond or otherwise as it considers proper.” Under these rules, a surety bond, cash, or other property may be used, yet the enforcement proceeding under Rule 65.1 had been limited to sureties. The amendment to Rule 65.1 allows enforcement proceedings to be brought against any security provider, whether a surety bond has been posted or not.

The last sentence of the rule was also amended to provide that the clerk shall “send” a copy of the motion for enforcement to the security provider rather than “mail” it. For example, this would allow notice to be sent by electronic means or by private delivery service.

These changes were modeled after similar changes to Rule 65.1 of the Federal Rules of Civil Procedure, effective in 2018.