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RAZOR eNewsletter FROM O'Connor Carnathan & Mack

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State and Federal Courts Decline to Stay Injunctions Pending Appeal

Recent decisions from both the First Circuit and the Massachusetts Superior Court (BLS) have refused requests to stay an order of injunctive relief pending appeal.

In the BLS (*Baldwin v. Connor*), Judge Salinger denied the defendants' motion asking the court to stay an order for declaratory and injunctive relief pending appeal. He rejected defendants' argument that Mass. R. Civ. P. 62(d) automatically stayed that order. Judge Salinger explained that "[t]he declaratory and injunctive relief set forth in § 1 of the judgment does not call for or require any execution upon the judgment. [The] phrase [in Rule 62(d)] refers to a writ of execution that may be issued to authorize the

collection of a judgment for money damages . . . This provision does not apply to injunctions" or to "declarations of rights that merely clarify the factual basis for the permanent injunctive relief that follows."

Likewise, in the First Circuit (*Somerville Public Schools v. McMahon*), the court denied appellants' request to stay a preliminary injunction pending appeal. That injunction enjoined the Department of Education and the Secretary of Education from carrying out an announced reduction in force and implementing a related Presidential executive order. The First Circuit found that the appellants had failed to make a strong showing that they were likely to succeed on their appeal. Notably, the "mere fact that the appellants have demonstrated some risk of irreparable harm" still did not entitle them to a stay.

These decisions emphasize the established law that injunctions are not automatically stayed pending appeal and demonstrate that a party enjoined by a lower court injunction will often have an uphill battle to freeze that order while appealing the underlying decision.

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OCM Law 10 Burlington Mall Road Suite 301 Burlington, Massachusetts 01803 United States (781) 359-9000