

CHAPTER 12

Forms

§ 12.1 Application for Permission to Take a Civil Interlocutory Appeal

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

| | | |
|----------------|---|-------------------------------------|
| [Insert Name], |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | [Insert District Court Case Number] |
| |) | |
| [Insert Name], |) | |
| |) | |
| Defendants. |) | |
| _____ |) | |

APPLICATION FOR PERMISSION TO TAKE A CIVIL INTERLOCUTORY APPEAL

COMES NOW the defendant, Jane Doe, by and through her attorney, Richard Roe, and makes application for permission to take interlocutory appeal pursuant to K.S.A. 60-2102(b). In support of her application, defendant Doe offers the following information required by Rule 4.01 of the Kansas Supreme Court.

1. On [Insert Date], an automobile accident occurred between John Moe and the defendants, June Doe and Jane Doe, in which John Moe allegedly suffered injury.
2. On [Insert Date], plaintiff filed a Petition against the defendants in the District Court of

[Insert Name] County, Kansas.

3. The defendants filed separate motions to dismiss plaintiff's claim for failure to state a claim upon which relief could be granted. More specifically, the defendants alleged that plaintiff failed to file his claim within the two year statute of limitations of K.S.A. 60-513. Plaintiff alleged that K.S.A. 60-206(a) controlled and that he had filed his petition within the statute of limitations.
4. Following oral argument, the Court on [Insert Date], entered an Order denying the defendants' Motions to Dismiss. The Court held that K.S.A. 60-206(a) controlled the calculation of the statute of limitations under K.S.A. 60-513, and found the plaintiff had filed his petition within the allowed time. The Court made those findings required by 60-2102(b) and stayed the proceedings until such time as the Kansas Court of Appeals should accept or deny an interlocutory appeal filed in the matter. A certified, file-stamped copy of the Journal Entry is attached hereto as Exhibit "A".
5. The controlling questions of law are:
 - A. Whether K.S.A. 60-206(a) applies in calculating the statute of limitations under K.S.A. 60-513?
 - B. Whether a calendar year, an anniversary year, or a 365 day period is used in calculating the statute of limitations under K.S.A. 60-513?
6. Defendants contend that K.S.A. 60-206(a) does not apply to calculating the statute of limitations under K.S.A. 60-513.
7. Plaintiff contends that 60-206(a) controls and that an anniversary year must be used in calculating the statute of limitations pursuant to K.S.A. 60-513.
8. Resolution of the controlling questions of law would determine whether plaintiff's claim was barred by the statute of limitations under K.S.A. 60-513 and, therefore, an immediate appeal may materially advance the ultimate termination of the litigation.

[Name of Law Firm or Agency]

BY _____
[Attorney's Name and Registration Number]
[Address]
[City, State and Zip Code]
[Telephone Number]
Attorney for [Insert party designation]

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing Application was mailed by First Class United States mail, postage prepaid, on [Insert Date], to:

[Insert names and addresses of those on whom service is made.]

[Attorney's Name and Registration Number]

PRACTICE NOTE: Most applications will be more factually complex than the form and require citation to case law as well as statutory authority, but the format remains the same. The application must be accompanied by the district court order from which appeal is sought to be taken, and that order or an amended order must include the findings required by K.S.A. 60-2102(b). See Rule 4.01.

