

**[APPELLATE COURT CAPTION]**

**MOTION TO ACCEPT JURISDICTION OVER INTERLOCUTORY APPEAL**

The Appellant, by counsel, respectfully requests the Indiana Court of Appeals to accept jurisdiction over an appeal that the trial court certified as interlocutory. In support of the request, the Appellant would show this Court as follows:

1. On [insert date], the State initiated this cause by filing an information against the Appellant, charging [insert charges].

2. On [insert date], the Appellant filed a [insert Motion from which appellate issue stems] alleging [insert issue(s)].

3. On [insert date], the trial court held an evidentiary hearing, and memorandum were submitted on [insert date].

4. On [insert date], the trial court denied the Appellant's [insert Motion].

5. On [insert date], the Appellant filed his Motion to Certify Order of [insert date of Order], for Interlocutory Appeal pursuant to Indiana Rules of Appellate Procedure 14 (B). The request was granted by the trial court on [insert date], which is the same date the trial court certified its Interlocutory Orders. A copy of the trial court's Certification of Interlocutory Order and a copy of the Interlocutory Order are attached.

6. The certified interlocutory Order of the trial court should be accepted by the Indiana Court of Appeals as [PICK ONE OR MORE: (1) the issue involves a substantial question of law, the early determination of which will promote a more orderly disposition of the case; (2) the Defendant will suffer substantial expense, damage, or injury if the order is erroneous and the determination of the error is withheld until after judgment; and (3) the remedy by appeal is otherwise inadequate]. [Insert specific facts concerning the appellate issue and persuasive reasoning of why the issue should be certified, such as whether the issue is of first impression in Indiana and whether a disposition of the issue would assist the Defendant and the State of Indiana in its case or dispose of the case].

7. The Court of Appeals should accept jurisdiction over this interlocutory order also as a matter of important public policy, as this substantial questions of law require decisions with finality. [Insert specific facts of and reasoning as to why appellate review is of a matter of important public policy].

8. [Insert if an interlocutory appeal from the denial of a Motion to Dismiss: This Court has accepted jurisdiction over an interlocutory order denying a criminal defendant's Motion to Dismiss previously. Schrefler v. State, 660 N.E.2d 585 (Ind.Ct.App. 1996).]

WHEREFORE, the Appellant, by counsel, respectfully requests this Court accept jurisdiction over the certified interlocutory Orders, and for all other relief just and proper in the premises.

(Signature)

## REFERENCES

## CASBANK G.1.b.2

Indiana Rule of Appellate Procedure 14 (setting forth the procedure for initiating an interlocutory appeal and the criteria for certification and acceptance; the Request for Acceptance of Jurisdiction must be filed within thirty (30) days of the date the trial court certification of the interlocutory order; a copy of the trial court's certification of the interlocutory order and a copy of the interlocutory order must be attached to the Request for Acceptance).

Indiana Rule of Appellate Procedure 14(B)(3) (requiring that the Notice of Appeal to be filed within fifteen days after the acceptance of jurisdiction by the Court of Appeals).

## CASE LAW

State v. Foy, 862 N.E.2d 1219 (Ind. Ct. App. 2007) (trial court did not abuse its discretion in murder case when it found good cause to permit State's belated motion to certify an interlocutory order for immediate appellate review where State's failure to timely file the appropriate motion was due to a mistake in calculating the time available to file).

Dingman v. State, 602 N.E.2d 184 (Ind.Ct.App. 1992) (although denial of a motion to suppress may be proper subject for interlocutory appeal if properly certified by the trial court and accepted by the reviewing court, there is no provision in the appellate rules for trial courts themselves to certify questions of law to the appellate courts).

Harrell v. State, 614 N.E.2d 959 (Ind.Ct.App. 1993) (despite acknowledging that delay occasioned by interlocutory appeal increases delay of speedy trial, the appellate court accepted interlocutory appeal of speedy trial claim; the Defendant showed that delay prior to trial was extraordinarily long, the State was not reasonably diligent in bringing the Defendant to trial, the Defendant asserted his right to speedy trial and the defense was demonstrably prejudiced by delay). See also Paul v. State, 799 N.E.2d 1194 (Ind.Ct.App. 2003).

Pelley v. State, 901 N.E.2d 494 (Ind. 2009) (criminal Rule 4(c) period does not include the time for State's interlocutory appeal when trial court proceedings have been stayed; however, trial court and Court of Appeals have discretion to deny a motion to stay if it appears that the State is seeking a stay for improper purposes, or if the appeal presents issues that are not critical to the case; State should alert the appellate court when it pursues an interlocutory appeal not chargeable to the defendant so the appellate court can be sensitive to the defendant's interest in avoiding delay).

Martakis v. State, 450 N.E.2d 128 (Ind.Ct.App. 1983) (interlocutory appeal is available to challenge a denial of motion to dismiss on double jeopardy grounds).

Mahrtdt v. State, 629 N.E.2d 244 (Ind.Ct.App. 1994) (interlocutory appeal holding appellant was prejudiced by the State's failure to comply with a discovery order; suppression of evidence warranted).

Hill v. State, 592 N.E.2d 1229 (Ind. 1992) (although Article I, Sections 16 and 17 of the Indiana Constitution provide that defendants have a constitutional right to be let to bail that is not excessive and the denial of bail was erroneous; the issue should have been raised through interlocutory appeal, and was moot after trial).

Soward v. State, 606 N.E.2d 885 (Ind.Ct.App. 1993) (interlocutory appeal of a juvenile waiver decision is allowed, although not mandatory).

State v. Owings, 600 N.E.2d 568 (Ind.Ct.App. 1992), *aff'd by*, 622 N.E.2d 948 (because the trial court's suppression of an unavailable witness' statement effectively undercut the State's case, the State was permitted to take an interlocutory appeal of the ruling; the State may appeal from an order granting motion to suppress evidence, if the order effectively terminates further prosecution. I.C. § 35-38-4-2.).

Green v. State, 469 N.E.2d 1169 (Ind. 1984) (rulings on motions in limine are not appealable on interlocutory or direct appeal).