

[CAPTION]

MOTION TO INTERVENE

_____ moves for leave to intervene pursuant to K.S.A. 60-224 to assert the (claims)(defenses) set forth in the attached pleading on grounds that [state the grounds for intervention of right or by permission as set forth in K.S.A. 60-224(a) or (b)].

(Signature of Attorney)
(Name), Attorney for (name of intervenor)
Bar Registration Number
Address
Telephone number
[Facsimile number]
[Email address]

Authority

K.S.A. 60-224(c)

Notes on Use

The statute provides for two forms of intervention. First, a person can intervene of right when (1) a statute confers an unconditional right to intervene, or (2) an applicant claims an interest relating to the property or transaction which is the subject of the action that may be substantially impaired or the disposition of which may substantially impair or impede the applicant's ability to protect the interest and the applicant's interest is not adequately represented by existing parties. K.S.A. 60-224(a). Thus, to intervene of right under K.S.A. 60-224(a), three factors must be present: (1) timely application; (2) substantial interest in the subject matter; and (3) inadequate representation of the applicant-intervenor's interest.

Second, a court may exercise its discretion to grant permissive intervention upon timely application (1) when a statute confers a conditional right to intervene, or (2) an applicant's claim or defense has a question of law or fact in common with the main action. When exercising its discretion, the court shall consider whether intervention will unduly delay or prejudice the adjudication of rights of the original parties. K.S.A. 60-224(b).

K.S.A. 60-224(c) requires a person who wants to intervene to file a motion, which must be served on parties as provided in K.S.A. 60-205. The motion must state the grounds for intervening and must be accompanied by a pleading setting forth the claim or defense being asserted. K.S.A. 60-224(c)(1). The court, in its discretion, may notify the chief legal officer of the state or subdivision thereof affected that the validity of a statute, regulation or constitutional provision is being challenged and allow intervention on proper application. K.S.A. 60-224(c)(2).

The motion to intervene, and any attached pleading, should be served upon the parties and filed with the court as required by K.S.A. 60-205(b) and (d)(3). If a hearing is sought on the motion to intervene, a notice of hearing must also be filed with the court and served on the parties.

Comments

Provisions of K.S.A. 60-224(a) allowing intervention of right should be liberally construed in favor of intervention. *In re Petition of City of Shawnee for Annexation of Land*, 236 Kan. 1, 11, 687 P.2d 603 (1984). Failure to timely intervene may result in waiver of a right to challenge a judgment. *Davis v. Prudential Property and Cas. Ins. Co.*, 961 F. Supp. 1496, 1499 (D. Kan. 1997). An order denying an application to intervene is a final, appealable order. *Campbell American Legion v. Wade*, 210 Kan. 537, Syl. ¶¶ 6,7, 502 P.2d 773 (1972).

If a trial court finds that proposed intervenors do not have a substantial interest in the subject matter of the litigation, then intervention is properly denied because one of the three factors required for intervention of right under K.S.A. 60-224(a) is not present. *State ex rel Stephan v. Kansas Dept. of Revenue*, 253 Kan. 412, 421, 856 P.2d 151 (1992).

The Kansas Administrative Procedure Act sets out the requirements for intervention before an administrative agency. K.S.A. 77-521. Also, individual administrative agencies may have specific regulations setting out requirements regarding intervention before that agency. See K.A.R. 21-40-17 (Kansas Human Rights Commission); K.A.R. 82-1-225 (Kansas Corporation Commission); K.A.R. 94-2-7 (Board of Tax Appeals). The Kansas Supreme Court has stated that, while it is appropriate for an administrative agency to have a liberal policy governing intervention, a party seeking to intervene in a court proceeding must show a direct interest in the pending matter. *Kansas-Nebraska Natural Gas Co. v. State Corporation Commission*, 205 Kan. 838, 843, 473 P.2d 27 (1970).