§ 470.60 Dismissal of appeal.

1. At any time after an appeal has been taken and before determination thereof, the appellate court in which such appeal is pending may, upon motion of the respondent or upon its own motion, dismiss such appeal upon the ground of mootness, lack of jurisdiction to determine it, failure of timely prosecution or perfection thereof, or other substantial defect, irregularity or failure of action by the appellant with respect to the prosecution or perfection of such appeal.

2. Such motion must be made upon reasonable notice to the appellant and with opportunity to be heard. If the people are the appellant, such notice must be served upon the appropriate district attorney either personally or by ordinary mail. If the appellant is a defendant, such notice must be served upon him by ordinary mail at his last known place of residence or, if he is imprisoned, at the institution in which he is confined, and similar notice must be served upon the attorney, if any, who last appeared for him. Upon determination of the motion, a copy of the order entered thereon must similarly be served.

3. Provided that a certificate granting leave to appeal is issued pursuant to this subdivision, an appeal may be taken, in the manner prescribed in subdivision four of section 460.10, to the court of appeals from an order of an intermediate appellate court dismissing an appeal thereto. Such appeal may be based either upon the ground that the dismissal was invalid as a matter of law or upon the ground that it constituted an abuse of discretion. A certificate granting leave to appeal from such an order of dismissal may be issued only by a judge of the court of appeals upon an application made in the manner prescribed in paragraph (b) of subdivision three of section 460.20. Upon such an appeal, the court of appeals must either affirm or reverse the intermediate appellate court order.