

1 **Rule 27A. Stays pending appeal from a court not of record**

2 When seeking a stay of a sentence imposed by a court not of record, a defendant shall use the  
3 procedure outlined in this Rule.

4 (a) Periods of incarceration of less than 30 days.

5 (a)(1) The filing of a notice of appeal pursuant to Rule 38, from a judgment that includes a term  
6 requiring the defendant to actually serve a period of incarceration of less than 30 days is, unless a  
7 defendant indicates differently in writing, also a motion to stay such term of sentence. No further  
8 written motion or application is necessary.

9 (a)(2) Within two days of the justice court's receipt of a notice of appeal including a sentence  
10 term described in Subsection (a)(1) the justice court judge shall order stayed that sentence term of  
11 incarceration. The court shall then order the defendant released on the least restrictive condition or  
12 combination of conditions in Rule 27 subsection (c) that the court determines will reasonably assure  
13 the appearance of the person as required and the safety of persons and property in the community.

14 (a)(3) However, the justice court shall not order a defendant released if:

15 (a)(3)(A) it has previously entered, or enters during that two day period, a written order  
16 indicating why the defendant poses an identifiable risk to the safety of another or the community  
17 and that the period of incarceration, and no less restrictive alternative, is necessary to reduce or  
18 eliminate that risk; or

19 (a)(3)(B) it enters a written finding that the appeal does not appear to have a legal basis.

20 (b) Periods of incarceration of 30 days or greater.

21 (b)(1) After the filing of a notice of appeal, if a stay is desired, the defendant shall file a written  
22 motion requesting a stay of a sentence term of incarceration of 30 days or more. That motion shall  
23 be accompanied by a memorandum indicating the legal basis for the appeal and that the appeal is  
24 not being taken for purposes of delay. The memorandum shall also address why the defendant is not  
25 a flight risk; and why the defendant does not pose a danger to any other person or the community.

26 (b)(2) A copy of the motion, and supporting memorandum shall be served on the prosecuting  
27 attorney. An opposing memorandum may be filed within 5 days after receipt of the application, or  
28 within a shorter time as the court deems necessary. A hearing on the application shall be held within  
29 5 days of the court receiving either the opposing memorandum or an indication that no opposing

30 memorandum will be filed. If no opposing memorandum is filed, the hearing will be held within 10  
31 days after the application is filed with the court.

32 (b)(3) If the court finds that the appeal is legally permitted, it shall order the defendant released  
33 unless it finds by a preponderance of the evidence that:

34 (b)(3)(A) the defendant is a flight risk; or

35 (b)(3)(B) the defendant would pose a danger to any other person or the community if released  
36 under any of the conditions set forth in Rule 27 subsection (c).

37 (b)(4) The court ordering release pending appeal under subsection (b)(3) shall order that release  
38 on the least restrictive condition or combination of conditions set forth in Rule 27 subsection (c) that  
39 the court determines will reasonably assure the appearance of the person as required and the safety  
40 of persons and property in the community.

41 (c) Terms of sentence other than incarceration. Upon the filing of a notice of appeal, and motion  
42 of the defendant, the justice court may stay any term of sentence related to the payment of fines, or  
43 conditions of probation (other than incarceration) pending disposition of the appeal, upon notice to  
44 the prosecution and a hearing if requested by the prosecution.

45 (d) A court may at any time for good cause shown amend its order granting release to impose  
46 additional or different conditions of release. However, the justice court may act under this  
47 subsection (d) only if the district court has not scheduled or held any hearings under subsection (e)  
48 of this rule.

49 (e) A party dissatisfied with the relief granted, denied or modified under this rule may petition  
50 the district court judge assigned to the appeal for relief.

51 (e)(1) Such petition shall be in writing and accompanied by the notice of appeal filed in the  
52 justice court, the original motion for a stay and accompanying papers filed in the justice court, if any,  
53 and any orders or findings of the justice court on the issue. The petition shall be served on the  
54 opposing party.

55 (e)(2) The district court shall schedule a hearing within five days of its receipt of the petition, or  
56 a shorter time if the court determines justice requires. The court shall allow the opposing party an  
57 opportunity to file a memorandum in opposition to the petition, and to be present and heard at the  
58 hearing.

59        (e)(3) The district court shall use the same presumptions, evidentiary burdens and procedures  
60 outlined in subsections (a)(b) and (c) of this rule in determining whether it should stay any terms of  
61 the justice court's sentence during the pendency of the appeal.

62        (f) For purposes of this rule, "term of sentence" or "sentence" shall include:

63        (f)(1) any terms or orders of the justice court emanating from a plea held in abeyance pursuant  
64 to Utah Code Ann. 77-2(a)-1 et seq.; and

65        (f)(2) findings of contempt pursuant to Utah Code Ann. § 78B-6-301 et seq.

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