

1 **Rule 38. ~~Trials de novo of justice~~ Appeals from justice court to district court ~~court~~**
2 **proceedings.**

3 (a) Appeal of a judgment or order of the justice court is as provided in Utah Code Section
4 78-5-120. A case appealed from a justice court shall be heard in a district courthouse located in the
5 same county as the justice court from which the case is appealed. In counties with multiple district
6 courthouse locations, the presiding judge of the district court shall determine the appropriate location
7 for the hearing of appeals.

8 (b) ~~Venue. The appeal shall be heard in the district court location nearest to and in the same~~
9 ~~county as the justice court from which the appeal is taken. Either party may move for a change of~~
10 ~~venue under the applicable Rules of Criminal Procedure:~~

11 (c) ~~(b)~~ The notice of appeal. The

12 (b)(1) A notice of appeal from an order or judgment must be filed within ~~thirty~~ 30 days of the
13 entry of judgment or order. ~~Within twenty days after receipt of the notice of appeal that order or~~
14 ~~judgment.~~

15 (b)(2) Contents of the notice. The notice required by this rule shall be in the form of, or
16 substantially similar to, that provided in the appendix of this rule. At a minimum the notice shall
17 contain:

18 (b)(2)(A) a statement of the order or judgment being appealed and the date of entry of that order
19 or judgment;

20 (b)(2)(B) the current address at which the appealing party may receive notices concerning the
21 appeal;

22 (b)(2)(C) a statement as to whether the defendant is in custody because of the order or judgment
23 appealed; and

24 (b)(2)(D) a statement that the notice has been served on the opposing party and the method of
25 that service.

26 (b)(3) Deficiencies in the form of the filing shall not cause the court to reject the filing. They
27 may, however, impact the efficient processing of the appeal.

28 (c) Duties of the justice court. Within five days of receiving the notice of appeal, the justice
29 court shall transmit to the appropriate district court a certified ~~copy of the docket~~ appeal packet

30 containing copies of:

31 (c)(1) the notice of appeal;

32 (c)(2) the docket;

33 (c)(3) the information or ~~waiver of information~~, citation;

34 (c)(4) the judgment and sentence, if any; and

35 (c)(5) any other orders and papers filed in the case.

36 (d) Stay of judgment. Upon the filing of the notice of appeal and the issuance of a certificate of
37 probable cause as provided for in the Rules of Criminal Procedure, the judgment of the justice court
38 shall be stayed.

39 (d) Duties of the district court.

40 (d)(1) Upon receipt of the appeal packet from the justice court, the district court shall hold a
41 scheduling conference to determine what issues must be resolved by the appeal. The district court
42 shall send notices to the appellant at the address provided on the notice of appeal. Notices to the
43 other party shall be to the address provided in the justice court docket for that party.

44 (d)(2) If the defendant is in custody because of the matter appealed, the district court shall hold
45 the conference within five days of the receipt of the appeals packet. If the defendant is not in custody
46 because of the matter appealed, the court shall hold the conference within 30 days of receipt of the
47 appeals packet.

48 (e) District court procedures for trials de novo. An appeal by a defendant pursuant to Utah Code
49 Ann. § 78A-7-118(1) shall be accomplished by the following procedures:

50 (e)(1) If the defendant elects to go to trial, the district court will determine what number and level
51 of offenses the defendant is facing.

52 (e)(2) Discovery, the trial, and any pre-trial evidentiary matters the court deems necessary, shall
53 be held in accordance with these rules.

54 (e)(3) After the trial, the district court shall, if appropriate, sentence the defendant and enter
55 judgment in the case as provided in these rules and otherwise by law.

56 (e)(4) When entered, the judgment of conviction or order of dismissal serves to vacate the
57 judgment or orders of the justice court and becomes the judgment of the case.

58 (e)(5) A defendant may resolve an appeal by waiving trial and compromising the case by any

59 process authorized by law to resolve a criminal case.

60 (e)(5)(A) Any plea shall be taken in accordance with these rules.

61 (e)(5)(B) The court shall proceed to sentence the defendant or enter such other orders required
62 by the particular plea or disposition.

63 (e)(5)(C) When entered, the district court's judgment or other orders vacate the orders or
64 judgment of the justice court and become the order or judgment of the case.

65 (e)(5)(D) A defendant who moves to withdraw a plea entered pursuant to this section may only
66 seek to withdraw it pursuant to the provisions of Utah Code Ann. § 77-13-6.

67 (e)(6) Other dispositions. A defendant, at a point prior to judgment, by plea or trial, may choose
68 to withdraw the appeal and have the case remanded to the justice court. Within 10 days of the
69 defendant notifying the court of such an election, the district court shall remand the case to the
70 justice court.

71 ~~(e) Orders. Upon the filing of the notice of appeal the district court shall issue all further orders~~
72 ~~governing the trial de novo or hearing de novo, except that the justice court shall determine the~~
73 ~~application for a certificate of probable cause.~~

74 ~~(f) Proceedings and order of the district court. The district court shall conduct anew the~~
75 ~~proceedings on which the judgment or order appealed from are based. Unless the case is remanded,~~
76 ~~the disposition of fine revenue shall be according to district court procedures. Upon entry of the~~
77 ~~judgment or final order of the district court, the clerk of the district court shall transmit to the justice~~
78 ~~court which rendered the original judgment notice of the manner of disposition of the case.~~

79 ~~(g) Remand. The district court may dismiss the appeal and remand the case to the justice court~~
80 ~~if the appellant:~~

81 ~~(g)(1) fails to appear;~~

82 ~~(g)(2) fails to take steps necessary to prosecute the appeal, or~~

83 ~~(g)(3) requests the appeal be dismissed.~~

84 ~~Upon entering a decision in a hearing de novo, the district court.~~

85 (f) District court procedures for hearings de novo. If the appeal seeks a de novo hearing pursuant
86 to Utah Code Ann. § 78A-7-118(3) or (4); and

87 (f)(1) the court shall conduct such hearing and make the appropriate findings or orders.

88 (f)(2) Within 10 days of entering its findings or orders, the district court shall remand the case
89 to the justice court as required by Utah Code Section 78-5-120., unless the case is disposed of by the
90 findings or orders, or the district court retains jurisdiction pursuant to § 78A-7-118(5).

91 (g) Retained jurisdiction. In cases where the district court retains jurisdiction after disposing of
92 the matters on appeal, the court shall order the justice court to forward all cash bail, other security,
93 or revenues received by the justice court to the district court for disposition. The justice court shall
94 transmit such monies or securities within 20 days of receiving the order.

95 (h) Other bases for remand. The district court may also remand a case to the justice court if it
96 finds that the defendant has abandoned the appeal.

97 (i) Justice court procedures on remand. Upon receiving a remanded case, the justice court shall
98 set a review conference to determine what, if any proceedings need be taken. If the defendant is in
99 custody because of the case being considered, such hearing shall be had within five days of receipt
100 of the order of remand. Otherwise, the review conference should be had within 30 days. The court
101 shall send notice of the review conference to the parties at the addresses contained in the notice of
102 appeal, unless those have been updated by the district court.

103 (j) During the pendency of the appeal, and until a judgment, order of dismissal, or other final
104 order is entered in the district court, the justice court shall retain jurisdiction to monitor terms of
105 probation or other consequences of the plea or judgment, unless those orders or terms are stayed
106 pursuant to Rule 27A.

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