

Rule 27B.

Effective Date: May 7, 2012

1 **Rule 27A-B Stays pending appeal from a court not of record- hearings de novo, DUI,**
2 **and reckless driving cases.**

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

5 (a) The procedures in this rule shall be used in determining whether to stay the payment of
6 any fines or periods of incarceration pending the resolution of an appeal for a hearing de novo,
7 pursuant to Utah Code §78A-7-118(3). This rule shall also govern stays in all appeals involving
8 violations of Title 41, Chapter 6a, Part 5, DUI and Reckless Driving, or any local ordinance as
9 described in Utah Code §41-6a-501(2)(a)(iii).

10 ~~(a) (b) Periods of incarceration of less than 30 days.~~

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

15 ~~(a)(2) Within two days of the justice court's receipt of a notice of appeal including a sentence~~
16 ~~term described in Subsection (a)(1) the justice court judge shall order stayed that sentence~~

17 (b)(1) Unless exempted under subsection (b)(2), the justice court judge shall, upon the filing
18 of a notice of appeal, stay the term of incarceration. The Court shall then order the defendant
19 released on the least restrictive condition or combination of conditions in rule 27(c) that the court
20 determines will reasonably assure the appearance of the person as required and the safety of
21 persons and property in the community.

22 ~~(a)(3) (b)(2) However, the justice court shall not order a defendant released if:~~

23 ~~(a)(3)(A) (b)(2)(A) it has previously entered, or enters during that two day period, a written~~
24 ~~order indicating why at the time of sentencing, the court makes a finding that the defendant poses~~
25 ~~an identifiable risk to the safety of another or the community and that the period of incarceration,~~
26 ~~and no less restrictive alternative, is necessary to reduce or eliminate that risk; or~~

27 ~~(a)(3)(B) (b)(2)(B) it enters a written finding that the appeal does not appear to have a legal~~
28 ~~basis.~~

29 ~~(b) (c) Periods of incarceration of 30 days or greater.~~

Rule 27B.

Effective Date: May 7, 2012

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

36 ~~(b)~~ ~~(c)~~(2) A copy of the motion, and supporting memorandum shall be served on the
37 prosecuting attorney. An opposing memorandum may be filed within 5 days after receipt of the
38 application, or ~~within~~ a shorter time as the court deems necessary. A hearing on the application
39 shall be held within 5 days of the court receiving either the opposing memorandum or an
40 indication that no opposing memorandum will be filed. If no opposing memorandum is filed, the
41 hearing will be held within 10 days after the application is filed with the court.

42 ~~(b)(3)~~ ~~(c)~~(3) ~~If the court finds that the appeal is legally permitted, it~~ The court shall order the
43 defendant released unless it finds by a preponderance of the evidence that:

44 ~~(b)(3)(c)~~(3)(A) the defendant is a flight risk; ~~or~~

45 ~~(b)(3)(c)~~(3)(B) the defendant would pose a danger to any other person or the community if
46 released under any of the conditions set forth in Rule 27(c); or

47 (c)(3)(C) the appeal does not appear to have a legal basis.

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

52 (d) Fine and Fee payments. Fine and fee payments shall be stayed pending resolution of the
53 appeal.

54 ~~(c) Terms of sentence other than incarceration. Upon the filing of a notice of appeal, and~~

55 (e) Other terms of sentence or probation. Upon motion of the defendant, the justice court may
56 stay any other term of sentence related to ~~the payment of fines, or~~ conditions of probation (other
57 than incarceration) pending disposition of the appeal, upon notice to the prosecution and a hearing
58 if requested by the prosecution.

Rule 27B.

Effective Date: May 7, 2012

59 ~~(d)~~ (f) A court may at any time for good cause shown amend its order granting release to
60 impose additional or different conditions of release. However, the justice court may only act
61 under this subsection ~~(d)~~ (f) ~~only~~ if the district court has not ~~scheduled~~ docketed or held any
62 hearings ~~under subsection (e)~~ of pursuant to this rule.

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

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

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

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

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

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

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

80