

IN THE SUPREME COURT OF THE STATE OF UTAH

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**FILED**  
**UTAH APPELLATE COURTS**  
July 21, 2015

In re: Proposed Amendments  
to Rules 2, 4, 12, 14, 16, 17, 21A, 22, 24, 26, 27, 27B, 28, 29, 29A and 38  
of the UTAH RULES OF CRIMINAL PROCEDURE

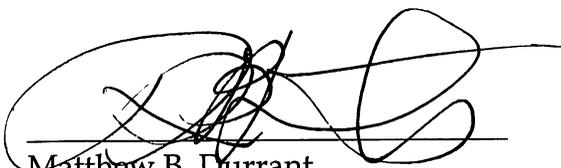
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**ORDER**

IT IS HEREBY ORDERED that the proposed amendments to Rules 2, 4, 12, 14, 16, 17, 21A, 22, 24, 26, 27, 27B, 28, 29, 29A and 38 of the Utah Rules of Criminal Procedure are adopted and promulgated effective November 1, 2015.

FOR THE COURT:

7-21-15  
Date

  
Matthew B. Durrant  
Chief Justice

## Rule 2. Time.

~~(a) In computing any period of time, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday. When a period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and legal holidays shall not be included in the computation.~~

(a) Computing time. The following rules apply in computing any time period specified in these rules, any local rule or court order, or in any statute that does not specify a method of computing time.

(a)(1) When the period is stated in days or a longer unit of time:

(a)(1)(A) exclude the day of the event that triggers the period;

(a)(1)(B) count every day, including intermediate Saturdays, Sundays, and legal holidays; and

(a)(1)(C) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(a)(2) When the period is stated in hours:

(a)(2)(A) begin counting immediately on the occurrence of the event that triggers the period; and

(a)(2)(B) count every hour, including hours during intermediate Saturdays, Sundays, and legal holidays.

(a)(3) Unless the court orders otherwise, if the clerk's office is inaccessible:

(a)(3)(A) on the last day for filing under Rule 6(a)(1), then the time for filing is extended to the first accessible day that is not a Saturday, Sunday or legal holiday; or

(a)(3)(B) during the last hour for filing under Rule 6(a)(2), then the time for filing is extended to the same time on the first accessible day that is not a Saturday, Sunday, or legal holiday.

(a)(4) Unless a different time is set by a statute or court order, filing on the last day means:

(a)(4)(A) for electronic filing, at midnight; and

(a)(4)(B) for filing by other means, the filing must be made before the clerk's office is scheduled to close.

(a)(5) The “next day” is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.

(a)(6) “Legal holiday” means the day for observing:

(a)(6)(A) New Year’s Day;

(a)(6)(B) Dr. Martin Luther King, Jr. Day;

(a)(6)(C) Washington and Lincoln Day;

(a)(6)(D) Memorial Day;

(a)(6)(E) Independence Day;

(a)(6)(F) Pioneer Day;

(a)(6)(G) Labor Day;

(a)(6)(H) Columbus Day;

(a)(6)(I) Veterans’ Day;

(a)(6)(J) Thanksgiving Day;

(a)(6)(K) Christmas; and

(a)(6)(L) and any designated by the Governor or Legislature as a state holiday.

~~(b) When an act is required or allowed to be done at or within a specified time, the court for cause shown may, at any time in its discretion:~~

~~(1) with or without motion or notice, order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order; or~~

~~(2) upon motion made after the expiration of the specified period, permit the act to be done if there was a reasonable excuse for the failure to act; but the court may not extend the time for taking any action under the rules applying to a judgment of acquittal, new trial, arrest of judgment and appeal, unless otherwise provided in these rules.~~

(b) Extending time.

(b)(1) When an act may or must be done within a specified time, the court may, for good cause, extend the time:

(b)(1)(A) with or without motion or notice if the court acts, or if a request is made, before the original time or its extension expires; or

(b)(1)(B) on motion made after the time has expired if the party failed to act because of excusable neglect.

(b)(2) A court must not extend the time for taking any action under the rules applying to a judgment of acquittal, new trial, arrest of judgment and appeal, unless otherwise provided in these rules.

~~(c) A written motion other than one that may be heard ex parte and notice of the hearing thereof shall be served not later than five days before the time specified for the hearing, unless a different period is fixed by rule or order of the court. When a motion is supported by affidavit, the affidavit shall be served with the motion and opposing affidavits may be served not less than one day before the hearing unless the court permits them to be served at a later time.~~

(c) Additional time after service by mail. When a party may or must act within a specified time after service and service is made by mail, three days are added after the period would otherwise expire under paragraph (a).

#### **Rule 4. Prosecution of public offenses.**

(a) Unless otherwise provided, all offenses shall be prosecuted by indictment or information sworn to by a person having reason to believe the offense has been committed.

(b) An indictment or information shall charge the offense for which the defendant is being prosecuted by using the name given to the offense by common law or by statute or by stating in concise terms the definition of the offense sufficient to give the defendant notice of the charge. If issued, the information shall include the citation number. Failure to include the number will not affect the court's jurisdiction. An information may contain or be accompanied by a statement of facts sufficient to make out probable cause to sustain the offense charged where appropriate. Such things as time, place, means, intent, manner, value and ownership need not be alleged unless necessary to charge the offense. Such things as money, securities, written instruments, pictures, statutes and judgments may be described by any name or description by which they are generally known or by which they may be identified without setting forth a copy. However, details concerning such things may be obtained through a bill of particulars. Neither presumptions of law nor matters of judicial notice need be stated.

(c) The court may strike any surplus or improper language from an indictment or information.

(d) The court may permit an information to be amended at any time before trial has commenced so long as the substantial rights of the defendant are not prejudiced. If an additional or different offense is charged, the defendant has the right to a preliminary hearing on that offense as provided under these rules and any continuance as necessary to meet the amendment. The court may permit an indictment or information to be amended after the trial has commenced but before verdict if no additional or different offense is charged and the substantial rights of the defendant are not prejudiced. After verdict, an indictment or information may be amended so as to state the offense with such particularity as to bar a subsequent prosecution for the same offense upon the same set of facts.

(e) When facts not set out in an information or indictment are required to inform a defendant of the nature and cause of the offense charged, so as to enable him to prepare his defense, the defendant may file a written motion for a bill of particulars. The motion shall be filed at arraignment or within ~~ten~~ 14 days thereafter, or at such later time as the court may permit. The court may, on its own motion, direct the filing of a bill of particulars. A bill of particulars may be amended or supplemented at any time subject to such conditions as justice may require. The request for and contents of a bill of particulars shall be limited to a statement of factual information needed to set forth the essential elements of the particular offense charged.

(f) An indictment or information shall not be held invalid because any name contained therein may be incorrectly spelled or stated.

(g) It shall not be necessary to negate any exception, excuse or proviso contained in the statute creating or defining the offense.

(h) Words and phrases used are to be construed according to their usual meaning unless they are otherwise defined by law or have acquired a legal meaning.

(i) Use of the disjunctive rather than the conjunctive shall not invalidate the indictment or information.

(j) The names of witnesses on whose evidence an indictment or information was based shall be endorsed thereon before it is filed. Failure to endorse shall not affect the validity but endorsement shall be ordered by the court on application of the defendant. Upon request the prosecuting attorney shall, except upon a showing of good cause, furnish the names of other witnesses he proposes to call whose names are not so endorsed.

(k) If the defendant is a corporation, a summons shall issue directing it to appear before the magistrate. Appearance may be by an officer or counsel. Proceedings against a corporation shall be the same as against a natural person.

**Rule 26. Written orders, judgments and decrees.**

(a) In all pretrial and postconviction rulings by a court, counsel for the party or parties obtaining the ruling shall within ~~fifteen~~ 14 days, or within a shorter time as the court may direct, file with the court a proposed order, judgment, or decree in conformity with the ruling.

(b) Copies of the proposed findings, judgments, and orders shall be served upon opposing counsel before being presented to the court for signature unless the court otherwise orders. Notice of objections shall be submitted to the court and counsel within ~~five~~ seven days after service.

(c) All orders, judgments, and decrees shall be prepared in such a manner as to show whether they are entered based on a ruling after a hearing or argument, the stipulation of counsel, the motion of counsel or upon the court's own initiative, and shall identify the attorneys of record in the cause or proceeding in which the judgment, order or decree is made. If the order, judgment, or decree is the result of a hearing, the order shall include the date of the hearing, the nature of the hearing, and the names of the attorneys and parties present at the hearing.

(d) The trial court shall prepare the final judgment and sentence, and any commitment order. The trial court shall serve the final judgment and sentence on the parties and immediately transmit any commitment order to the county sheriff.

~~(d) (e) All orders, judgments and decrees shall be prepared as separate documents and shall not include any matters by reference unless otherwise directed by the court. Orders not constituting judgments or decrees may be made a part of the documents containing the stipulation or motion upon which the order is based.~~

~~(e) (f) No orders, judgments, or decrees based upon stipulation shall be signed or entered unless the stipulation is in writing, signed by the attorneys of record for the respective parties and filed with the clerk or the stipulation was made on the record .~~

## Utah State Courts Rules - Published for Comment

### Comment: Rules of Criminal Procedure

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Rule 26. If the amendment to (d) anticipates the court creating all the final judgments and commitments someone should carefully consider the fiscal note. currently the state is preparing those in the 8th district. our clerks are fully occupied with their assigned tasks and would not have the time to accomplish the additional workload. at least 3 additional district clerks would be necessary to accomplish the anticipated change. It would be far better to allow each district the option of designating which entity should prepare that documentation.

Posted by Ed Peterson    October 23, 2014 11:13 AM

URCrP 026. I am not sure the purpose behind requiring the Court to prepare the final judgment and sentence. Obviously the Court has to approve and sign any final judgment and sentence, but many courts have the parties prepare the written judgment and then present it to the Court for the Court's approval. This not only expedites the process by avoiding the extra delay caused by a judge having to hand write multiple judgments in a day, but it also allows the party to work out the exact wording to which the parties are willing to agree.

Additionally, in the case of misdemeanors (see UCA 77-13-4), the plea can be done by affidavit or written agreement. This rule change would prevent the parties from preparing the proposed judgment for the Court to include with the other plea documents. Currently, when we draft a proposed judgment, we have lines for the defendant and the defense attorney to sign stating they approve of the proposed judgment as drafted. This speeds up the process, insures that the parties know what is being proposed specifically, and places the defendant's approving signature right on the judgment. This proposed rule change will make pleas by affidavit significantly more difficult.

Posted by Randall K. McUne    October 3, 2014 08:25 AM

**Rule 29. Disability and disqualification of a judge or change of venue.**

(a) If, by reason of death, sickness, or other disability, the judge before whom a trial has begun is unable to continue with the trial, any other judge of that court or any judge assigned by the presiding officer of the Judicial Council, upon certifying that the judge is familiar with the record of the trial, may, unless otherwise disqualified, proceed with and finish the trial, but if the assigned judge is satisfied that neither he nor another substitute judge can proceed with the trial, the judge may, in his discretion, grant a new trial.

(b) If, by reason of death, sickness, or other disability, the judge before whom a defendant has been tried is unable to perform the duties required of the court after a verdict of guilty, any other judge of that court or any judge assigned by the presiding officer of the Judicial Council may perform those duties.

(c)(1)(A) A party to any action or the party's attorney may file a motion to disqualify a judge. The motion shall be accompanied by a certificate that the motion is filed in good faith and shall be supported by an affidavit stating facts sufficient to show bias or prejudice, or conflict of interest.

(c)(1)(B) The motion shall be filed after commencement of the action, but not later than ~~20~~ 21 days after the last of the following:

(c)(1)(B)(i) assignment of the action or hearing to the judge;

(c)(1)(B)(ii) appearance of the party or the party's attorney; or

(c)(1)(B)(iii) the date on which the moving party learns or with the exercise of reasonable diligence should have learned of the grounds upon which the motion is based.

If the last event occurs fewer than ~~20~~ 21 days prior to a hearing, the motion shall be filed as soon as practicable.

(c)(1)(C) Signing the motion or affidavit constitutes a certificate under Rule 11, Utah Rules of Civil Procedure and subjects the party or attorney to the procedures and sanctions of Rule 11. No party may file more than one motion to disqualify in an action.

(c)(1)(D) The other parties to the action may not file an opposition to the motion and if any response is filed it will not be considered. The moving party need not file a Request to Submit for Decision under Rule 12. The motion will be submitted for decision upon filing,

(c)(2) The judge against whom the motion and affidavit are directed shall, without further hearing, enter an order granting the motion or certifying the motion and affidavit to a reviewing judge. The judge shall take no further action in the case until the motion is decided. If the judge grants the motion, the order shall direct the presiding judge of the court or, if the court has no presiding judge, the presiding officer of the Judicial Council to assign another judge to the action

or hearing. Assignment in justice court cases shall be in accordance with Utah Code Ann. §78A-7-208. The presiding judge of the court, any judge of the district, any judge of a court of like jurisdiction, or the presiding officer of the Judicial Council may serve as the reviewing judge.

(c)(3)(A) If the reviewing judge finds that the motion and affidavit are timely filed, filed in good faith and legally sufficient, the reviewing judge shall assign another judge to the action or hearing or request the presiding judge or the presiding officer of the Judicial Council to do so. Assignment in justice court cases shall be in accordance with Utah Code Ann. §78A-7-208.

(c)(3)(B) In determining issues of fact or of law, the reviewing judge may consider any part of the record of the action and may request of the judge who is the subject of the motion and affidavit an affidavit responsive to questions posed by the reviewing judge.

(c)(3)(C) The reviewing judge may deny a motion not filed in a timely manner.

~~(d)(1) If the prosecution or a defendant in a criminal action believes that a fair and impartial trial cannot be had in the jurisdiction where the action is pending, either may, by motion, supported by an affidavit setting forth facts, ask to have the trial of the case transferred to another jurisdiction:~~

~~(d)(2) If the court is satisfied that the representations made in the affidavit are true and justify transfer of the case, the court shall enter an order for the removal of the case to the court of another jurisdiction free from the objection and all records pertaining to the case shall be transferred forthwith to the court in the other county. If the court is not satisfied that the representations so made justify transfer of the case, the court shall either enter an order denying the transfer or order a formal hearing in court to resolve the matter and receive further evidence with respect to the alleged prejudice.~~

~~(e) When a change of judge or place of trial is ordered all documents of record concerning the case shall be transferred without delay to the judge who shall hear the case.~~

(d)(1) In the courts of record, if a party believes that a fair and impartial trial cannot be had in the court location or in the county where the action is pending, that party may move to have the trial of the case take place with a jury from another county or the case transferred to a court location in a county where a fair trial may be held. Such motion shall be supported by an affidavit setting forth facts.

(d)(2) If the court is satisfied that the representations made in the affidavit required by subsection (1) are true and justify a change of jury pool or location, the court shall enter an order transferring the case, or selecting a jury from a county free from the objection. If the court is not satisfied that the representations justify an alternate jury pool or transfer of the case, the court shall either enter an order denying the motion or order a hearing to receive further evidence with respect to the alleged prejudice and resolve the matter.

(d)(3) In the justice courts, if a party believes that a fair and impartial trial cannot be had in the court location or in the county where the action is pending, that party may move to have the trial of the case take place with a jury from another county or in a court location where a fair trial may be held. Such motion shall be supported by an affidavit setting forth facts.

(d)(4) If the court is satisfied that the representations made in the affidavit required by subsection (3) are true and justify a change of jury pool or location, the court shall enter an order selecting a jury from a county free from the objection; or directing that trial proceedings be held in a court location free from the objection. If the court is not satisfied that the representations justify an alternate jury pool or relocation of the trial, the court shall either enter an order denying the motion or order a hearing to receive further evidence with respect to the alleged prejudice and resolve the matter.

(d)(5) A motion filed pursuant to this subsection (d) shall be filed not later than 14 days after the party learns or with the exercise of reasonable diligence should have learned of the grounds upon which the motion is based.

(e) When a change of judge or place of trial is ordered all documents of record concerning the case shall, without delay, be transferred or made available in the new location.

## **Rule 12. Motions.**

(a) Motions. An application to the court for an order shall be by motion, which, unless made during a trial or hearing, shall be in writing and in accordance with this rule. A motion shall state succinctly and with particularity the grounds upon which it is made and the relief sought. A motion need not be accompanied by a memorandum unless required by the court.

(b) Request to Submit for Decision. If neither party has advised the court of the filing nor requested a hearing, when the time for filing a response to a motion and the reply has passed, either party may file a request to submit the motion for decision. If a written Request to Submit is filed it shall be a separate pleading so captioned. The Request to Submit for Decision shall state the date on which the motion was served, the date the opposing memorandum, if any, was served, the date the reply memorandum, if any, was served, and whether a hearing has been requested. The notification shall contain a certificate of mailing to all parties. If no party files a written Request to Submit, or the motion has not otherwise been brought to the attention of the court, the motion will not be considered submitted for decision.

(c) Time for filing specified motions. Any defense, objection or request, including request for rulings on the admissibility of evidence, which is capable of determination without the trial of the general issue may be raised prior to trial by written motion.

(c)(1) The following shall be raised at least ~~five~~ seven days prior to the trial:

(c)(1)(A) defenses and objections based on defects in the indictment or information ;

(c)(1)(B) motions to suppress evidence;

(c)(1)(C) requests for discovery where allowed;

(c)(1)(D) requests for severance of charges or defendants;

(c)(1)(E) motions to dismiss on the ground of double jeopardy ; or

(c)(1)(F) motions challenging jurisdiction, unless good cause is shown why the issue could not have been raised at least ~~five~~ seven days prior to trial.

(c)(2) Motions for a reduction of criminal offense at sentencing pursuant to Utah Code Section 76-3-402(1) shall be in writing and filed at least ~~ten~~ 14 days prior to the date of sentencing unless the court sets the date for sentencing within ten days of the entry of conviction. Motions for a reduction of criminal offense pursuant to Utah Code Section 76-3-402(2) may be raised at any time after sentencing upon proper service of the motion on the appropriate prosecuting entity.

(d) Motions to Suppress. A motion to suppress evidence shall:

(d)(1) describe the evidence sought to be suppressed;

(d)(2) set forth the standing of the movant to make the application; and

(d)(3) specify sufficient legal and factual grounds for the motion to give the opposing party reasonable notice of the issues and to enable the court to determine what proceedings are appropriate to address them.

If an evidentiary hearing is requested, no written response to the motion by the non-moving party is required, unless the court orders otherwise. At the conclusion of the evidentiary hearing, the court may provide a reasonable time for all parties to respond to the issues of fact and law raised in the motion and at the hearing.

(e) A motion made before trial shall be determined before trial unless the court for good cause orders that the ruling be deferred for later determination. Where factual issues are involved in determining a motion, the court shall state its findings on the record.

(f) Failure of the defendant to timely raise defenses or objections or to make requests which must be made prior to trial or at the time set by the court shall constitute waiver thereof, but the court for cause shown may grant relief from such waiver.

(g) ~~Except in justices' courts,~~ a A verbatim record shall be made of all proceedings at the hearing on motions, including such findings of fact and conclusions of law as are made orally.

(h) If the court grants a motion based on a defect in the institution of the prosecution or in the indictment or information, it may also order that bail be continued for a reasonable and specified time pending the filing of a new indictment or information. Nothing in this rule shall be deemed to affect provisions of law relating to a statute of limitations.

## **Rule 14. Subpoenas**

(a) Subpoenas requiring the attendance of a witness or interpreter and production or inspection of records, papers, or other objects.

(a)(1) A subpoena to require the attendance of a witness or interpreter before a court, magistrate or grand jury in connection with a criminal investigation or prosecution may be issued by the magistrate with whom an information is filed, the prosecuting attorney on his or her own initiative or upon the direction of the grand jury, or the court in which an information or indictment is to be tried. The clerk of the court in which a case is pending shall issue in blank to the defendant, without charge, as many signed subpoenas as the defendant may require. An attorney admitted to practice in the court in which the action is pending may also issue and sign a subpoena as an officer of the court.

(a)(2) A subpoena may command the person to whom it is directed to appear and testify or to produce in court or to allow inspection of records, papers or other objects, other than those records pertaining to a victim covered by Subsection (b). The court may quash or modify the subpoena if compliance would be unreasonable.

(a)(3) A subpoena may be served by any person over the age of 18 years who is not a party. Service shall be made by delivering a copy of the subpoena to the witness or interpreter personally and notifying the witness or interpreter of the contents. A peace officer shall serve any subpoena delivered for service in the peace officer's county.

(a)(4) Written return of service of a subpoena shall be made promptly to the court and to the person requesting that the subpoena be served, stating the time and place of service and by whom service was made.

(a)(5) A subpoena may compel the attendance of a witness from anywhere in the state.

(a)(6) When a person required as a witness is in custody within the state, the court may order the officer having custody of the witness to bring the witness before the court.

(a)(7) Failure to obey a subpoena without reasonable excuse may be deemed a contempt of the court responsible for its issuance.

(a)(8) Whenever a material witness is about to leave the state, or is so ill or infirm as to afford reasonable grounds for believing that the witness will be unable to attend a trial or hearing, either party may, upon notice to the other, apply to the court for an order that the witness be examined conditionally by deposition. Attendance of the witness at the deposition may be compelled by subpoena. The defendant shall be present at the deposition and the court shall make whatever order is necessary to effect such attendance.

(b) Subpoenas for the production of records of victim.

(b)(1) No subpoena or court order compelling the production of medical, mental health, school, or other non-public records pertaining to a victim shall be issued by or at the request of the defendant unless the court finds after a hearing, upon notice as provided below, that the defendant is entitled to production of the records sought under applicable state and federal law.

(b)(2) The request for the subpoena or court order shall identify the records sought with particularity and be reasonably limited as to subject matter.

(b)(3) The request for the subpoena or court order shall be filed with the court as soon as practicable, but no later than ~~30~~ 28 days before trial, or by such other time as permitted by the court. The request and notice of any hearing shall be served on counsel for the victim or victim's representative and on the prosecutor. Service on an unrepresented victim shall be made on the prosecutor.

(b)(4) If the court makes the required findings under subsection (b)(1), it shall issue a subpoena or order requiring the production of the records to the court. The court shall then conduct an in camera review of the records and disclose to the defense and prosecution only those portions that the defendant has demonstrated a right to inspect.

(b)(5) The court may, in its discretion or upon motion of either party or the victim or the victim's representative, issue any reasonable order to protect the privacy of the victim or to limit dissemination of disclosed records.

(b)(6) For purposes of this rule, "victim" and "victim's representative" are used as defined in Utah Code Ann. § 77-38-2(2).

(c) Applicability of Rule 45, Utah Rules of Civil Procedure.

The provisions of Rule 45, Utah Rules of Civil Procedure, shall govern the content, issuance, and service of subpoenas to the extent that those provisions are consistent with the Utah Rules of Criminal Procedure.

**Rule 16. Discovery.**

(a) Except as otherwise provided, the prosecutor shall disclose to the defense upon request the following material or information of which he has knowledge:

(1) relevant written or recorded statements of the defendant or codefendants;

(2) the criminal record of the defendant;

(3) physical evidence seized from the defendant or codefendant;

(4) evidence known to the prosecutor that tends to negate the guilt of the accused, mitigate the guilt of the defendant, or mitigate the degree of the offense for reduced punishment; and

(5) any other item of evidence which the court determines on good cause shown should be made available to the defendant in order for the defendant to adequately prepare his defense.

(b) The prosecutor shall make all disclosures as soon as practicable following the filing of charges and before the defendant is required to plead. The prosecutor has a continuing duty to make disclosure.

(c) Except as otherwise provided or as privileged, the defense shall disclose to the prosecutor such information as required by statute relating to alibi or insanity and any other item of evidence which the court determines on good cause shown should be made available to the prosecutor in order for the prosecutor to adequately prepare his case.

(d) Unless otherwise provided, the defense attorney shall make all disclosures at least ~~ten~~ 14 days before trial or as soon as practicable. He has a continuing duty to make disclosure.

(e) When convenience reasonably requires, the prosecutor or defense may make disclosure by notifying the opposing party that material and information may be inspected, tested or copied at specified reasonable times and places. The prosecutor or defense may impose reasonable limitations on the further dissemination of sensitive information otherwise subject to discovery to prevent improper use of the information or to protect victims and witnesses from harassment, abuse, or undue invasion of privacy, including limitations on the further dissemination of videotaped interviews, photographs, or psychological or medical reports.

(f) Upon a sufficient showing the court may at any time order that discovery or inspection be denied, restricted, or deferred, that limitations on the further dissemination of discovery be modified or make such other order as is appropriate. Upon motion by a party, the court may permit the party to make such showing, in whole or in part, in the form of a written statement to be inspected by the judge alone. If the court enters an order granting relief following such an ex parte showing, the entire text of the party's statement shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal.

(g) If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule, the court may order such party to permit the discovery or inspection, grant a continuance, or prohibit the party from introducing evidence not disclosed, or it may enter such other order as it deems just under the circumstances.

(h) Subject to constitutional limitations, the accused may be required to:

(1) appear in a lineup;

(2) speak for identification;

(3) submit to fingerprinting or the making of other bodily impressions;

(4) pose for photographs not involving reenactment of the crime;

(5) try on articles of clothing or other items of disguise;

(6) permit the taking of samples of blood, hair, fingernail scrapings, and other bodily materials which can be obtained without unreasonable intrusion;

(7) provide specimens of handwriting;

(8) submit to reasonable physical or medical inspection of his body; and

(9) cut hair or allow hair to grow to approximate appearance at the time of the alleged offense. Whenever the personal appearance of the accused is required for the foregoing purposes, reasonable notice of the time and place of such appearance shall be given to the accused and his counsel. Failure of the accused to appear or to comply with the requirements of this rule, unless relieved by order of the court, without reasonable excuse shall be grounds for revocation of pre-trial release, may be offered as evidence in the prosecutor's case in chief for consideration along with other evidence concerning the guilt of the accused and shall be subject to such further sanctions as the court should deem appropriate.

**Rule 17. The trial.**

(a) In all cases the defendant shall have the right to appear and defend in person and by counsel. The defendant shall be personally present at the trial with the following exceptions:

(1) In prosecutions of misdemeanors and infractions, defendant may consent in writing to trial in his absence;

(2) In prosecutions for offenses not punishable by death, the defendant's voluntary absence from the trial after notice to defendant of the time for trial shall not prevent the case from being tried and a verdict or judgment entered therein shall have the same effect as if defendant had been present; and

(3) The court may exclude or excuse a defendant from trial for good cause shown which may include tumultuous, riotous, or obstreperous conduct.

Upon application of the prosecution, the court may require the personal attendance of the defendant at the trial.

(b) Cases shall be set on the trial calendar to be tried in the following order:

(1) misdemeanor cases when defendant is in custody;

(2) felony cases when defendant is in custody;

(3) felony cases when defendant is on bail or recognizance; and

(4) misdemeanor cases when defendant is on bail or recognizance.

(c) All felony cases shall be tried by jury unless the defendant waives a jury in open court with the approval of the court and the consent of the prosecution.

(d) All other cases shall be tried without a jury unless the defendant makes written demand at least ~~ten~~ 14 days prior to trial, or the court orders otherwise. No jury shall be allowed in the trial of an infraction.

(e) In all cases, the number of members of a trial jury shall be as specified in Section 78-46-5, U.C.A. 1953.

(f) In all cases the prosecution and defense may, with the consent of the accused and the approval of the court, by stipulation in writing or made orally in open court, proceed to trial or complete a trial then in progress with any number of jurors less than otherwise required.

(g) After the jury has been impaneled and sworn, the trial shall proceed in the following order:

- (1) The charge shall be read and the plea of the defendant stated;
- (2) The prosecuting attorney may make an opening statement and the defense may make an opening statement or reserve it until the prosecution has rested;
- (3) The prosecution shall offer evidence in support of the charge;
- (4) When the prosecution has rested, the defense may present its case;
- (5) Thereafter, the parties may offer only rebutting evidence unless the court, for good cause, otherwise permits;
- (6) When the evidence is concluded and at any other appropriate time, the court shall instruct the jury; and
- (7) Unless the cause is submitted to the jury on either side or on both sides without argument, the prosecution shall open the argument, the defense shall follow and the prosecution may close by responding to the defense argument. The court may set reasonable limits upon the argument of counsel for each party and the time to be allowed for argument.
- (h) If a juror becomes ill, disabled or disqualified during trial and an alternate juror has been selected, the case shall proceed using the alternate juror. If no alternate has been selected, the parties may stipulate to proceed with the number of jurors remaining. Otherwise, the jury shall be discharged and a new trial ordered.
- (i) Questions by jurors. A judge may invite jurors to submit written questions to a witness as provided in this section.
  - (1) If the judge permits jurors to submit questions, the judge shall control the process to ensure the jury maintains its role as the impartial finder of fact and does not become an investigative body. The judge may disallow any question from a juror and may discontinue questions from jurors at any time.
  - (2) If the judge permits jurors to submit questions, the judge should advise the jurors that they may write the question as it occurs to them and submit the question to the bailiff for transmittal to the judge. The judge should advise the jurors that some questions might not be allowed.
  - (3) The judge shall review the question with counsel and unrepresented parties and rule upon any objection to the question. The judge may disallow a question even though no objection is made. The judge shall preserve the written question in the court file. If the question is allowed, the judge shall ask the question or permit counsel or an unrepresented party to ask it. The question may be rephrased into proper form. The judge shall allow counsel and unrepresented parties to examine the witness after the juror's question.

(j) When in the opinion of the court it is proper for the jury to view the place in which the offense is alleged to have been committed, or in which any other material fact occurred, it may order them to be conducted in a body under the charge of an officer to the place, which shall be shown to them by some person appointed by the court for that purpose. The officer shall be sworn that while the jury are thus conducted, he will suffer no person other than the person so appointed to speak to them nor to do so himself on any subject connected with the trial and to return them into court without unnecessary delay or at a specified time.

(k) At each recess of the court, whether the jurors are permitted to separate or are sequestered, they shall be admonished by the court that it is their duty not to converse among themselves or to converse with, or suffer themselves to be addressed by, any other person on any subject of the trial, and that it is their duty not to form or express an opinion thereon until the case is finally submitted to them.

(l) Upon retiring for deliberation, the jury may take with them the instructions of the court and all exhibits which have been received as evidence, except exhibits that should not, in the opinion of the court, be in the possession of the jury, such as exhibits of unusual size, weapons or contraband. The court shall permit the jury to view exhibits upon request. Jurors are entitled to take notes during the trial and to have those notes with them during deliberations. As necessary, the court shall provide jurors with writing materials and instruct the jury on taking and using notes.

(m) When the case is finally submitted to the jury, they shall be kept together in some convenient place under charge of an officer until they agree upon a verdict or are discharged, unless otherwise ordered by the court. Except by order of the court, the officer having them under his charge shall not allow any communication to be made to them, or make any himself, except to ask them if they have agreed upon their verdict, and he shall not, before the verdict is rendered, communicate to any person the state of their deliberations or the verdict agreed upon.

(n) After the jury has retired for deliberation, if they desire to be informed on any point of law arising in the cause, they shall inform the officer in charge of them, who shall communicate such request to the court. The court may then direct that the jury be brought before the court where, in the presence of the defendant and both counsel, the court shall respond to the inquiry or advise the jury that no further instructions shall be given. Such response shall be recorded. The court may in its discretion respond to the inquiry in writing without having the jury brought before the court, in which case the inquiry and the response thereto shall be entered in the record.

(o) If the verdict rendered by a jury is incorrect on its face, it may be corrected by the jury under the advice of the court, or the jury may be sent out again.

(p) At the conclusion of the evidence by the prosecution, or at the conclusion of all the evidence, the court may issue an order dismissing any information or indictment, or any count thereof, upon the ground that the evidence is not legally sufficient to establish the offense charged therein or any lesser included offense.

Advisory Committee Notes

June 4, 2014

**Rule 21A. Presentence investigation reports; Restitution.**

(a) Presentence investigation reports shall be completed by order of the court as provided in Utah Code Sections 77-18-1 and 64-13-20. Presentence reports shall either be physically removed from the case file and kept in a separate storage area or retained in the case file in a sealed envelope marked "Protected".

(b) Full disclosure of the presentence investigation report shall be made to the prosecutor, defense counsel, or the defendant if the defendant is not represented by counsel, unless disclosure of the presentence report would jeopardize the life or safety of third parties. At least three working business days in advance of the scheduled sentencing date, the Department shall provide a copy of the presentence investigation report to the court, and to the defendant's counsel or the defendant if not represented by counsel, and the prosecutor. The presentence report shall also be made available to prosecutors, defense counsel and the defendant at the court on the date of sentencing. In cases where a party or a party's counsel notifies the court clerk, in writing, that the presentence investigation report is the subject of an appeal, the clerk shall include the sealed presentence investigation report as part of the record.

(c) Restitution.

(c)(1) The presentence investigation report prepared by the Department of Corrections shall include a specific statement of pecuniary damages as provided in Utah Code Section 77-18-1(4). This statement shall include, but not be limited to, a specific dollar amount recommended by the Department of Corrections to be paid by the defendant to the victim(s).

(c)(2) In cases where a specific dollar value is not known, and is not an accumulating amount, e.g. continuing medical expenses, the court may continue the sentencing. If sentencing occurs, it shall be done with the concurrence of defense counsel/defendant and the prosecutor and an agreement shall be reached as to how restitution shall be determined. In no instance shall the restitution amount be determined by the Department of Corrections without approval of the court, defendant, defense counsel and the prosecutor. If the parties disagree about the restitution amount, a restitution hearing shall be scheduled.

**Rule 22. Sentence, judgment and commitment.**

(a) Upon the entry of a plea or verdict of guilty or plea of no contest, the court shall set a time for imposing sentence which shall be not less than two nor more than 45 days after the verdict or plea, unless the court, with the concurrence of the defendant, otherwise orders. Pending sentence, the court may commit the defendant or may continue or alter bail or recognizance.

Before imposing sentence the court shall afford the defendant an opportunity to make a statement and to present any information in mitigation of punishment, or to show any legal cause why sentence should not be imposed. The prosecuting attorney shall also be given an opportunity to present any information material to the imposition of sentence.

(b) On the same grounds that a defendant may be tried in defendant's absence, defendant may likewise be sentenced in defendant's absence. If a defendant fails to appear for sentence, a warrant for defendant's arrest may be issued by the court.

(c)(1) Upon a verdict or plea of guilty or plea of no contest, the court shall impose sentence and shall enter a judgment of conviction which shall include the plea or the verdict, if any, and the sentence. Following imposition of sentence, the court shall advise the defendant of defendant's right to appeal and the time within which any appeal shall be filed.

(c)(2) If the defendant is convicted of a misdemeanor crime of domestic violence, as defined in Utah Code Section 77-36-1, the court shall advise the defendant orally or in writing that, as a result of the conviction, it is unlawful for the defendant to possess, receive or transport any firearm or ammunition. The failure to advise does not render the plea invalid or form the basis for withdrawal of the plea.

(d) When a jail or prison sentence is imposed, the court shall issue its commitment setting forth the sentence. The officer delivering the defendant to the jail or prison shall deliver a true copy of the commitment to the jail or prison and shall make the officer's return on the commitment and file it with the court.

(e) The court may correct an illegal sentence, or a sentence imposed in an illegal manner, at any time.

(f) Upon a verdict or plea of guilty and mentally ill, the court shall impose sentence in accordance with Title 77, Chapter 16a, Utah Code. If the court retains jurisdiction over a mentally ill offender committed to the Department of Human Services as provided by Utah Code Ann. § 77-16a-202(1)(b), the court shall so specify in the sentencing order.

**Rule 24. Motion for new trial.**

(a) The court may, upon motion of a party or upon its own initiative, grant a new trial in the interest of justice if there is any error or impropriety which had a substantial adverse effect upon the rights of a party.

(b) A motion for a new trial shall be made in writing and upon notice. The motion shall be accompanied by affidavits or evidence of the essential facts in support of the motion. If additional time is required to procure affidavits or evidence the court may postpone the hearing on the motion for such time as it deems reasonable.

(c) A motion for a new trial shall be made not later than ~~10~~ 14 days after entry of the sentence, or within such further time as the court may fix before expiration of the time for filing a motion for new trial.

(d) If a new trial is granted, the party shall be in the same position as if no trial had been held and the former verdict shall not be used or mentioned either in evidence or in argument.

**Rule 27. Stays of sentence pending appeal from courts of record.**

(a) Staying sentence terms other than incarceration.

(a)(1) A sentence of death is stayed if an appeal or a petition for other relief is pending. The defendant shall remain in the custody of the warden of the Utah State Prison until the appeal or petition for other relief is resolved.

(a)(2) When an appeal is taken by the prosecution, a stay of any order of judgment in favor of the defendant may be granted by the court upon good cause pending disposition of the appeal.

(a)(3) Upon the filing of a notice of appeal, and motion of the defendant, the court may stay any sentenced amount of fines, conditions of probation (other than incarceration) pending disposition of the appeal, upon notice to the prosecution and a hearing if requested by the prosecution.

(a)(4) A party dissatisfied with the trial court's ruling on such a motion may petition for relief in the court in which the appeal is pending.

(b) Staying sentence terms of incarceration. A defendant sentenced, or required as a term of probation, to serve a period of incarceration in jail or in prison, shall be detained, unless released by the court in conformity with this rule.

(b)(1) In general. Before a court may release a defendant after the filing of a notice of appeal, the court must:

(b)(1)(A) issue a certificate of probable cause; and

(b)(1)(B) determine by clear and convincing evidence that the defendant:

(b)(1)(B)(i) is not likely to flee; and

(b)(1)(B)(ii) does not pose a danger to the safety of any other person or the community if released under any conditions as set forth in subsection (c).

(b)(2) A defendant shall file a written motion in the trial court requesting a stay of the sentence term of incarceration.

(b)(2)(A) That motion shall be accompanied by a copy of the filed notice of appeal; a written application for a certificate of probable cause; and a memorandum of law. The memorandum shall identify the issues to be presented on appeal and support the defendant's position that those issues raise a substantial question of law or fact reasonably likely to result in reversal, an order for a new trial or a sentence that does not include a term of incarceration in jail or prison. The memorandum shall also address why clear and convincing evidence exists that the defendant is not a flight risk and that the defendant does not pose a danger to any other person or the

community.

(b)(2)(B) A copy of the motion, the application for a certificate of probable cause and supporting memorandum shall be served on the prosecuting attorney. An opposing memorandum may be filed within ~~10~~ 14 days after receipt of the application, or within a shorter time as the court deems necessary. A hearing on the application shall be held within ~~10~~ 14 days after the court receives the opposing memorandum, or if no opposing memorandum is filed, within ~~15~~ 14 days after the application is filed with the court.

(b)(3) The court shall issue a certificate of probable cause if it finds that the appeal:

(b)(3)(A) is not being taken for the purpose of delay; and

(b)(3)(B) raises substantial issues of law or fact reasonably likely to result in reversal, an order for a new trial or a sentence that does not include a term of incarceration in jail or prison.

(b)(4) If the court issues a certificate of probable cause it shall order the defendant released if it finds that clear and convincing evidence exists to demonstrate that the defendant is not a flight risk and that the defendant does not pose a danger to any other person or the community if released under any of the conditions set forth in subsection (c).

(b)(5) The court ordering release pending appeal under subsection (b)(4) shall order release on the least restrictive condition or combination of conditions set forth in subsection (c) that the court determines will reasonably assure the appearance of the person as required and the safety of persons and property in the community.

(b)(6) Review of trial court's order. A party dissatisfied with the relief granted or denied under this subsection may petition the court in which the appeal is pending for relief.

(b)(6)(A) If the petition is filed by the defendant, a copy of the petition, the affidavit and papers filed in support of the original motion shall be served on the Utah Attorney General if the case involves any felony charge, and on the prosecuting attorney if the case involves only misdemeanor charges.

(b)(6)(B) If the petition is filed by the prosecution, a copy of the petition and supporting papers shall be served on defense counsel, or the defendant if the defendant is not represented by counsel.

(c) If the court determines that the defendant may be released pending appeal, it may release the defendant on the least restrictive condition or combination of conditions that the court determines will reasonably assure the appearance of the person as required and the safety of persons and property in the community, which conditions may include, without limitation, that the defendant:

(c)(1) is admitted to appropriate bail;

- (c)(2) not commit a federal, state or local crime during the period of release;
  - (c)(3) remain in the custody of a designated person who agrees to assume supervision of the defendant and who agrees to report any violation of a release condition to the court, if the designated person is reasonably able to assure the court that the person will appear as required and will not pose a danger to the safety of any other person or the community;
  - (c)(4) maintain employment, or if unemployed, actively seek employment;
  - (c)(5) maintain or commence an educational program;
  - (c)(6) abide by specified restrictions on personal associations, place of abode or travel;
  - (c)(7) avoid all contact with the victim or victims of the crime(s), any witness or witnesses who testified against the defendant and any potential witnesses who might testify concerning the offenses if the appeal results in a reversal or an order for a new trial;
  - (c)(8) report on a regular basis to a designated law enforcement agency, pretrial services agency or other agency;
  - (c)(9) comply with a specified curfew;
  - (c)(10) refrain from possessing a firearm, destructive device or other dangerous weapon;
  - (c)(11) refrain from possessing or using alcohol, or any narcotic drug or other controlled substance except as prescribed by a licensed medical practitioner;
  - (c)(12) undergo available medical, psychological or psychiatric treatment, including treatment for drug or alcohol abuse or dependency;
  - (c)(13) execute an agreement to forfeit, upon failing to appear as required, such designated property, including money, as is reasonably necessary to assure the appearance of the defendant as required, and post with the court such indicia of ownership of the property or such percentage of the money as the court may specify;
  - (c)(14) return to custody for specified hours following release for employment, schooling or other limited purposes; and
  - (c)(15) satisfy any other condition that is reasonably necessary to assure the appearance of the defendant as required and to assure the safety of persons and property in the community.
- (d) The court may at any time for good cause shown amend the order granting release to impose additional or different conditions of release.

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

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

(b) Periods of incarceration of ~~less than 30~~ 28 days or less .

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

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

(b)(2)(A) at the time of sentencing, the court makes a finding that the defendant poses an identifiable risk to the safety of another or the community and that the period of incarceration, and no less restrictive alternative, is necessary to reduce or eliminate that risk; or

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

(c) Periods of incarceration of ~~30 days or greater~~ longer than 28 days.

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

(c)(2) A copy of the motion, and supporting memorandum shall be served on the prosecuting attorney. An opposing memorandum may be filed within 5 seven days after receipt of the application, or shorter time as the court deems necessary. A hearing on the application shall be held within 5 seven days of the court receiving either the opposing memorandum or an indication that no opposing memorandum will be filed. If no opposing memorandum is filed, the hearing will be held within ~~10~~ 14 days after the application is filed with the court.

(c)(3) The court shall order the defendant released unless it finds by a preponderance of the evidence that:

(c)(3)(A) the defendant is a flight risk;

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

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

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

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

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

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

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

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

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

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

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

(h)(1) any terms or orders of the justice court emanating from a plea held in abeyance pursuant to

Utah Code .§ 77-2(a)-1 et seq.; and

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

September 17, 2014

**Rule 28. Disposition after appeal.**

(a) If a judgment of conviction is reversed, a new trial shall be held unless otherwise specified by the appellate court. Pending a new trial or other proceeding, the defendant shall be detained, or released upon bail, or otherwise restricted as the trial court on remand determines proper. If no further trial or proceeding is to be had a defendant in custody shall be discharged, and a defendant restricted by bail or otherwise shall be released from restriction and bail exonerated and any deposit of funds or property refunded to the proper person.

(b) Upon affirmance by the appellate court, the judgment or order affirmed or modified shall be executed.

(c) Unless otherwise ordered by the trial court, within ~~30~~ 28 days after receipt of the remittitur, the trial court shall notify the parties and place the matter on the calendar for review.

**Rule 29A. Change of judge as a matter of right.**

(a) Notice of change. In any criminal action commenced after April 15, 1992 in any district or justice court, all parties joined in the action may, by unanimous agreement and without cause, change the judge assigned to the action by filing a notice of change of judge. The parties shall send a copy of the notice to the assigned judge and the presiding judge. The notice shall be signed by all parties and shall state: (1) the name of the assigned judge; (2) the date on which the action was commenced; (3) that all parties joined in the action have agreed to the change; (4) that no other persons are expected to be named as parties; and (5) that a good faith effort has been made to serve all parties named in the pleadings. The notice shall not specify any reason for the change of judge. Under no circumstances shall more than one change of judge be allowed under this rule in any action. A change of judge under this rule is available only after a judge has been assigned to the case for trial. A notice of change may not be filed prior to or during a preliminary examination.

(b) Time. The notice shall be filed by the later of ~~30~~ 28 days after bindover to the assigned judge, or if the assigned judge has rejected a proposed plea disposition, within 10 days of such rejection. Failure to file a timely notice precludes any change of judge under this rule.

(c) Assignment of action. Upon the filing of a notice of change, the assigned judge shall take no further action in the case. The presiding judge shall promptly determine whether the notice is proper and, if so, shall reassign the action. If the presiding judge is also the assigned judge, the clerk shall promptly send the notice to the Chief Justice, who shall determine whether the notice is proper and, if so, shall reassign the action.

(d) Nondisclosure to court. No party shall communicate to the court, or cause another to communicate to the court, the fact of any party's seeking consent to a notice of change.

(e) Rule 29 unaffected. This rule does not affect any rights under Rule 29.

**Rule 38. Appeals from justice court to district court.**

(a) Appeal of a judgment or order of the justice court is as provided in Utah Code Section 78A-7-118. A case appealed from a justice court shall be heard in a district courthouse located in the same county as the justice court from which the case is appealed. In counties with multiple district courthouse locations, the presiding judge of the district court shall determine the appropriate location for the hearing of appeals.

(b) The notice of appeal.

(b)(1) A notice of appeal from an order or judgment must be filed within 30 days of the entry of that order or judgment.

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

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

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

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

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

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

(c) Duties of the justice court. Within ~~five~~ seven days of receiving the notice of appeal, the justice court shall notify the appropriate district court of the appeal packet.

(d) Duties of the district court.

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

(d)(2) If the defendant is in custody because of the matter appealed, the district court shall hold the conference within ~~five~~ seven days of being notified of the appeal. If the defendant is not in

custody because of the matter appealed, the court shall hold the conference within ~~30~~ 28 days of being notified of the appeal.

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

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

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

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

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

(e)(5) A defendant may resolve an appeal by waiving trial and compromising the case by any process authorized by law to resolve a criminal case.

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

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

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

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

(e)(6) Other dispositions. A defendant, at a point prior to judgment, by plea or trial, may choose to withdraw the appeal and have the case remanded to the justice court. Within ~~10~~ 14 days of the defendant notifying the court of such an election, the district court shall remand the case to the justice court.

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

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

(f)(2) Within ~~10~~ 14 days of entering its findings or orders, the district court shall remand the case to the justice court, unless the case is disposed of by the findings or orders, or the district court

retains jurisdiction pursuant to §78A-7-118(6).

(g) Retained jurisdiction. In cases where the district court retains jurisdiction after disposing of the matters on appeal, the court shall order the justice court to forward all cash bail, other security, or revenues received by the justice court to the district court for disposition. The justice court shall transmit such monies or securities within ~~20~~ 21 days of receiving the order.

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

(i) Justice court procedures on remand. Upon receiving a remanded case, the justice court shall set a review conference to determine what, if any proceedings need be taken. If the defendant is in custody because of the case being considered, such hearing shall be had within five days of receipt of the order of remand. Otherwise, the review conference should be had within ~~30~~ 28 days. The court shall send notice of the review conference to the parties at the addresses contained in the notice of appeal, unless those have been updated by the district court.

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

(k) Reinstatement of dismissed appeal. An appeal dismissed pursuant to subsection (h) may be reinstated by the district court upon motion of the defendant for:

(1) mistake, inadvertence, surprise, excusable neglect; or

(2) fraud, misrepresentation, or misconduct of an adverse party.

The motion shall be made within a reasonable time after entry of the order of dismissal or remand.