

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

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

6 (b) The notice of appeal.

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

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

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

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

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

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

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

20 (c) Motion to reinstate period for filing appeal.

21 (c)(1) Upon a showing that a defendant was deprived of the right to appeal, the justice court shall
22 reinstate the thirty-day period for filing an appeal. A defendant seeking such reinstatement shall file a
23 written motion in the justice court and serve the prosecuting entity. The court shall appoint counsel if the
24 defendant qualifies for court-appointed counsel. The prosecutor shall have 21 days after service of the
25 motion to file a written response. If the prosecutor opposes the motion, the justice court shall set a
26 hearing at which the parties may present evidence. If the justice court finds by a preponderance of the
27 evidence that the defendant has demonstrated that the defendant was deprived of the right to appeal, it
28 shall enter an order reinstating the time for appeal. The defendant's notice of appeal must be filed with the
29 clerk of the justice court within 30 days after the date of entry of the order.

30 (c)(2) Absent a showing of excusable neglect, a motion to reinstate may be filed no later than six
31 months after the original time for appeal has expired.

32 ~~(e)(d)~~ Duties of the justice court. Within five days of receiving the notice of appeal, the justice court
33 shall ~~transmit to~~ notify the appropriate district court ~~a certified of the appeal, packet containing copies of:~~

34 ~~(e)(d)(1) the notice of appeal;~~

35 ~~(e)(d)(2) the docket;~~

36 ~~(e)(d)(3) the information or citation;~~

37 ~~(e)(d)(4) the judgment and sentence, if any; and~~

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38 ~~(c)(d)(5) any other orders and papers filed in the case.~~

39 ~~(d)(e)~~ Duties of the district court.

40 ~~(d)(e)(1) Upon receipt being notified of the appeal packet from the justice court,~~ the district court shall
41 hold a 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 other
43 party shall be to the address provided in the justice court docket for that party.

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

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

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

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

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

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

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

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

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

73 ~~(f)~~(g)(2) Within 10 days of entering its findings or orders, the district court shall remand the case to the
74 justice court , unless the case is disposed of by the findings or orders, or the district court retains
75 jurisdiction pursuant to §78A-7-118(6).

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

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

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

88 ~~(j)~~(k) During the pendency of the appeal, and until a judgment, order of dismissal, or other final order
89 is entered in the district court, the justice court shall retain jurisdiction to monitor terms of probation or
90 other consequences of the plea or judgment, unless those orders or terms are stayed pursuant to Rule
91 27A.