

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

8       (b) The notice of appeal.

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

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

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

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

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

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

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

24       (c) Duties of the justice court. Within five days of receiving the notice of  
25 appeal, the justice court shall ~~transmit to~~ notify the appropriate district court ~~a~~  
26 certified of the appeal packet

27       ~~containing copies of:~~

- 28 ~~(c)(1) the notice of appeal;~~  
29 ~~(c)(2) the docket;~~  
30 ~~(c)(3) the information or citation;~~  
31 ~~(c)(4) the judgment and sentence, if any; and~~  
32 ~~(c)(5) any other orders and papers filed in the case.~~  
33 ~~(d) Duties of the district court.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

78 (f)(2) Within 10 days of entering its findings or orders, the district court shall  
79 remand the case to the justice court , unless the case is disposed of by the  
80 findings or orders, or the district court retains jurisdiction pursuant to §78A-7-  
81 118(6).

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

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

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

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

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

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

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

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