

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

7 **(b) The notice of appeal.**

8 (b)(1) A notice of appeal from an order or judgment must be filed within 28 days of the
9 entry of that order or judgment.

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

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

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

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

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

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

23 **(c) Motion to reinstate period for filing appeal.**

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

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

37 (d)(1) **Duties of the justice court.** Within 7 days of receiving the notice of appeal, the justice
38 court must transmit to the appropriate district court an appeal packet containing:

39 (d)(1)(A) the notice of appeal;

40 (d)(1)(B) the docket;

41 (d)(1)(C) the information or citation; and

42 (d)(1)(D) the judgment and sentence, if any.

43 (d)(2) Upon request from the district court the justice court must transmit to the district court any
44 other orders and papers filed in the case.

45 (e) **Duties of the district court.**

46 (e)(1) Upon receipt of the appeal packet from the justice court, the district court must
47 hold a scheduling conference to determine what issues must be resolved by the appeal.
48 The district court must send notices to the appellant at the address provided on the notice
49 of appeal. Notices to the other party must be served to the address provided in the justice
50 court docket for that party.

51 (e)(2) If the defendant is in custody because of the matter appealed, the district court must
52 hold the conference within 7 days of the receipt of the appeals packet. If the defendant is
53 not in custody because of the matter appealed, the court must hold the conference within
54 28 days of receipt of the appeals packet.

55 (f) **District court procedures for trials de novo.** An appeal by a defendant pursuant to Utah
56 Code § 78A-7-118(1) must be accomplished by the following procedures:

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

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

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

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

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

67 (f)(5)(A) Any plea must be taken in accordance with these rules.

68 (f)(5)(B) The court must proceed to sentence the defendant or enter such other
69 orders required by the particular plea or disposition.

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

73 (f)(5)(D) A defendant who moves to withdraw a plea entered pursuant to this
74 section may only seek to withdraw it pursuant to the provisions of Utah Code §
75 77-13-6.

76 (f)(6) **Other dispositions.** A defendant, at a point prior to entering a plea admitting guilt
77 or a no contest plea, or prior to commencement of trial, may choose to withdraw the
78 appeal and have the case remanded to the justice court. Within 14 days of the defendant
79 notifying the court of such an election, the district court shall remand the case to the
80 justice court.

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

83 (g)(1) the court must conduct such hearing and make the appropriate findings or orders,
84 and

85 (g)(2) within 14 days of entering its findings or orders, the district court must remand the
86 case to the justice court, unless the case is disposed of by the findings or orders, or the
87 district court retains jurisdiction pursuant to § 78A-7-118(6).

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

92 (i) **Other bases for remand.** The district court may also dismiss the appeal and remand the case
93 to the justice court if it finds that the defendant has abandoned the appeal.

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

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

104 **(l) Reinstatement of dismissed appeal.**

105 (l)(1) An appeal dismissed pursuant to subsection (i) may be reinstated by the district
106 court upon motion of the defendant for:

107 (l)(1)(A) mistake, inadvertence, surprise, excusable neglect; or

108 (l)(1)(B) fraud, misrepresentation, or misconduct of an adverse party.

109 (l)(2) The motion must be made within a reasonable time after entry of the order of
110 dismissal or remand.

111 | Effective ~~May~~October 1, 2020