

1 **Rule 38. Appeals from justice court to district court.**
2

3 (a) Appeal of a judgment or order of the justice court is as provided in Utah Code Section
4 78A-7-118. A case appealed from a justice court shall be heard in a district courthouse located in
5 the same county as the justice court from which the case is appealed. In counties with multiple
6 district courthouse 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 days of the
10 entry of that order or judgment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45 ~~(e)~~(d)(5) any other orders and papers filed in the case.
46 ~~(d)~~(e) Duties of the district court.
47 ~~(d)~~(e)(1) Upon receipt of the appeal packet from the justice court, the district court shall
48 hold a scheduling conference to determine what issues must be resolved by the appeal.
49 The district court shall send notices to the appellant at the address provided on the notice
50 of appeal. Notices to the other party shall be to the address provided in the justice court
51 docket for that party.
52 ~~(d)~~(e)(2) If the defendant is in custody because of the matter appealed, the district court
53 shall hold the conference within 7 days of the receipt of the appeals packet. If the
54 defendant is not in custody because of the matter appealed, the court shall hold the
55 conference within 28 days of receipt of the appeals packet.
56 ~~(e)~~(f) District court procedures for trials de novo. An appeal by a defendant pursuant to Utah
57 Code Ann. §78A-7-118(1) shall be accomplished by the following procedures:
58 ~~(e)~~(f)(1) If the defendant elects to go to trial, the district court will determine what
59 number and level of offenses the defendant is facing.
60 ~~(e)~~(f)(2) Discovery, the trial, and any pre-trial evidentiary matters the court deems
61 necessary, shall be held in accordance with these rules.
62 ~~(e)~~(f)(3) After the trial, the district court shall, if appropriate, sentence the defendant and
63 enter judgment in the case as provided in these rules and otherwise by law.
64 ~~(e)~~(f)(4) When entered, the judgment of conviction or order of dismissal serves to vacate
65 the judgment or orders of the justice court and becomes the judgment of the case.
66 ~~(e)~~(f)(5) A defendant may resolve an appeal by waiving trial and compromising the case
67 by any process authorized by law to resolve a criminal case.
68 ~~(e)~~(f)(5)(A) Any plea shall be taken in accordance with these rules.
69 ~~(e)~~(f)(5)(B) The court shall proceed to sentence the defendant or enter such other
70 orders required by the particular plea or disposition.
71 ~~(e)~~(f)(5)(C) When entered, the district court's judgment or other orders vacate the
72 orders or judgment of the justice court and become the order or judgment of the
73 case.
74 ~~(e)~~(f)(5)(D) A defendant who moves to withdraw a plea entered pursuant to this
75 section may only seek to withdraw it pursuant to the provisions of Utah Code
76 Ann. § 77-13-6.
77 ~~(e)~~(f)(6) Other dispositions. A defendant, at a point prior to judgment, by plea or trial,
78 may choose to withdraw the appeal and have the case remanded to the justice court.
79 Within 14 days of the defendant notifying the court of such an election, the district court
80 shall remand the case to the justice court.
81 ~~(f)~~(g) District court procedures for hearings de novo. If the appeal seeks a de novo hearing
82 pursuant to Utah Code Ann. § 78A-7-118(3) or (4); and
83 ~~(f)~~(g)(1) the court shall conduct such hearing and make the appropriate findings or orders.
84 ~~(f)~~(g)(2) Within 14 days of entering its findings or orders, the district court shall remand
85 the case to the justice court , unless the case is disposed of by the findings or orders, or
86 the district court retains jurisdiction pursuant to §78A-7-118(6).
87 ~~(g)~~(h) Retained jurisdiction. In cases where the district court retains jurisdiction after disposing
88 of the matters on appeal, the court shall order the justice court to forward all cash bail, other

89 security, or revenues received by the justice court to the district court for disposition. The justice
90 court shall transmit such monies or securities within 21 days of receiving the order.

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

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

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

103 ~~(k)~~(l) Reinstatement of dismissed appeal.

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

106 ~~(k)~~(l)(1)(A) mistake, inadvertence, surprise, excusable neglect; or

107 ~~(k)~~(l)(1)(B) fraud, misrepresentation, or misconduct of an adverse party.

108 ~~(k)~~(l)(2) The motion shall be made within a reasonable time after entry of the order of
109 dismissal or remand.