

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

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3 (a) Appeal of a judgment or order of the justice court is as provided in Utah Code § 78A-  
4 7-118. A case appealed from a justice court shall be heard in a district courthouse  
5 located in the same county as the justice court from which the case is appealed. In  
6 counties with multiple district courthouse locations, the presiding judge of the district  
7 court shall determine the 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 entry of  
15 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 order or  
19 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 filing.  
23 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 justice  
26 court shall reinstate the thirty-day period for filing an appeal. A defendant seeking such  
27 reinstatement shall file a written motion in the justice court and serve the prosecuting  
28 entity. The court shall appoint counsel if the defendant qualifies for court-appointed  
29 counsel. The prosecutor shall have 21 days after service of the motion to file a written  
30 response. If the prosecutor opposes the motion, the justice court shall set a hearing at  
31 which the parties may present evidence. If the justice court finds by a preponderance of  
32 the evidence that the defendant has demonstrated that the defendant was deprived of

33 the right to appeal, it shall enter an order reinstating the time for appeal. The  
34 defendant's notice of appeal must be filed with the clerk of the justice court within 30  
35 days after the date of entry of the order.

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

38 ~~(e)~~(d) Duties of the justice court. Within five days of receiving the notice of appeal, the  
39 justice court shall transmit to the appropriate district court a certified appeal packet  
40 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  
50 notice of appeal. Notices to the other party shall be to the address provided in the  
51 justice court 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  
57 Utah Code § 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 orders  
72 or judgment of the justice court and become the order or judgment of the case.

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

75 ~~(e)~~(f)(6) Other dispositions. A defendant, at a point prior to judgment, by plea or trial,  
76 may choose to withdraw the appeal and have the case remanded to the justice court.

77 Within 14 days of the defendant notifying the court of such an election, the district court  
78 shall remand the case to the justice court.

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

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

83 ~~(f)~~(g)(2) Within 14 days of entering its findings or orders, the district court shall remand  
84 the case to the justice court , unless the case is disposed of by the findings or orders, or  
85 the district court retains jurisdiction pursuant to Utah Code § 78A-7-118(6).

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

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

93 ~~(i)~~(j) Justice court procedures on remand. Upon receiving a remanded case, the justice  
94 court shall set a review conference to determine what, if any proceedings need be

95 taken. If the defendant is in custody because of the case being considered, such  
96 hearing shall be had within five days of receipt of the order of remand. Otherwise, the  
97 review conference should be had within 28 days. The court shall send notice of the  
98 review conference to the parties at the addresses contained in the notice of appeal,  
99 unless those have been updated by the district court.

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

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

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

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

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

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

Effective November 1, 2016