Rule 38. Appeals from justice court to district court.

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

(b) The notice of appeal.

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

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

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

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

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

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

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

(c) Motion to reinstate period for filing appeal.

(c)(1) Upon a showing that a defendant was deprived of the right to appeal, the justice court shall reinstate the thirty-day period for filing an appeal. A defendant seeking such reinstatement shall file a written motion in the justice court and serve the prosecuting entity. The court shall appoint counsel if the defendant qualifies for court-appointed counsel. The prosecutor shall have 21 days after service of the motion to file a written response. If the prosecutor opposes the motion, the justice court shall set a hearing at which the parties may present evidence. If the justice court finds by a preponderance of the evidence that the defendant has demonstrated that the defendant was deprived of the right to appeal, it shall enter an order reinstating the time for appeal. The

32 defendant's notice of appeal must be filed with the clerk of the justice court within 30 days after

33 the date of entry of the order.

34 (c)(2) Absent a showing of excusable neglect, a motion to reinstate may be filed no later than six

35 months after the original time for appeal has expired.

36 (d) Duties of the justice court. Within 7 days of receiving the notice of appeal, the justice court

37 shall notify the appropriate district court of the appeal packet containing:

38 (d)(1) the notice of appeal;

39 (d)(2) the docket;

40 (d)(3) the information or citation;

41 (d)(4) the judgment and sentence, if any; and

42 (d)(5) any other orders and papers filed in the case.

43 (e) Duties of the district court.

44 (e)(1) Upon receipt of the appeal packet from the justice court, the district court shall hold a

45 scheduling conference to determine what issues must be resolved by the appeal. The district

46 court shall send notices to the appellant at the address provided on the notice of appeal. Notices

47 to the other party shall be to the address provided in the justice court docket for that party.

48 (e)(2) If the defendant is in custody because of the matter appealed, the district court shall hold

49 the conference within 7 days of the receipt of the appeals packet. If the defendant is not in

50 custody because of the matter appealed, the court shall hold the conference within 28 days of

51 receipt of the appeals packet.

52 (f) District court procedures for trials de novo. An appeal by a defendant pursuant to Utah Code

53 Ann. §78A-7-118(1) shall be accomplished by the following procedures:

54 (f)(1) If the defendant elects to go to trial, the district court will determine what number and level

55 of offenses the defendant is facing.

56 (f)(2) Discovery, the trial, and any pre-trial evidentiary matters the court deems necessary, shall

57 be held in accordance with these rules.

58 (f)(3) After the trial, the district court shall, if appropriate, sentence the defendant and enter

59 judgment in the case as provided in these rules and otherwise by law.

60 (f)(4) When entered, the judgment of conviction or order of dismissal serves to vacate the

61 judgment or orders of the justice court and becomes the judgment of the case.

62 (f)(5) A defendant may resolve an appeal by waiving trial and compromising the case by any

63 process authorized by law to resolve a criminal case.

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

65 (f)(5)(B) The court shall proceed to sentence the defendant or enter such other orders required by

66 the particular plea or disposition.

67 (f)(5)(C) When entered, the district court's judgment or other orders vacate the orders or

68 judgment of the justice court and become the order or judgment of the case.

69 (f)(5)(D) A defendant who moves to withdraw a plea entered pursuant to this section may only

70 seek to withdraw it pursuant to the provisions of Utah Code Ann. § 77-13-6.

71 (f)(6) Other dispositions. A defendant, at a point prior to ~~judgment, by~~ entering a plea admitting

72 guilt or a no contest plea, or prior to commencement of trial, may choose to withdraw the appeal

73 and have the case remanded to the justice court. Within 14 days of the defendant notifying the

74 court of such an election, the district court shall remand the case to the justice court.

75 (g) District court procedures for hearings de novo. If the appeal seeks a de novo hearing pursuant

76 to Utah Code Ann. § 78A-7-118(3) or (4); and

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

78 (g)(2) Within 14 days of entering its findings or orders, the district court shall remand the case to

79 the justice court , unless the case is disposed of by the findings or orders, or the district court

80 retains jurisdiction pursuant to §78A-7-118(6).

81 (h) Retained jurisdiction. In cases where the district court retains jurisdiction after disposing of

82 the matters on appeal, the court shall order the justice court to forward all cash bail, other

83 security, or revenues received by the justice court to the district court for disposition. The justice

84 court shall transmit such monies or securities within 21 days of receiving the order.

85   (i) Other bases for remand. The district court may also remand a case to the justice court if it

86 finds that the defendant has abandoned the appeal.

87 (j) Justice court procedures on remand. Upon receiving a remanded case, the justice court shall

88 set a review conference to determine what, if any proceedings need be taken. If the defendant is

89 in custody because of the case being considered, such hearing shall be had within five days of

90 receipt of the order of remand. Otherwise, the review conference should be had within 28 days.

91 The court shall send notice of the review conference to the parties at the addresses contained in

92 the notice of appeal, unless those have been updated by the district court.

93   (k) During the pendency of the appeal, and until a judgment, order of dismissal, or other final

94   order is entered in the district court, the justice court shall retain jurisdiction to monitor terms of

95   probation or other consequences of the plea or judgment, unless those orders or terms are stayed

96   pursuant to Rule 27A.

97   (l) Reinstatement of dismissed appeal.

98   (l)(1) An appeal dismissed pursuant to subsection (h) may be reinstated by the district court upon

99   motion of the defendant for:

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

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

102   (l)(2) The motion shall be made within a reasonable time after entry of the order of dismissal or

103   remand.

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