

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 § 78A-7-**
4 **118.** A case appealed from a justice court ~~shall~~ must 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~~ will determine the
7 appropriate location for the hearing of appeals.
8

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

10
11 (b)(1) A notice of appeal from an order or judgment must be filed within 28 days of the entry of
12 that order or judgment.
13

14 (b)(2) Contents of the notice. The notice required by this rule ~~shall~~ must be in the form of, or
15 substantially similar to, that provided in the appendix of this rule. At a minimum the notice ~~shall~~
16 must contain:
17

18 (b)(2)(A) a statement of the order or judgment being appealed and the date of entry of that order
19 or judgment;
20

21 (b)(2)(B) the current address at which the appealing party may receive notices concerning the
22 appeal;
23

24 (b)(2)(C) a statement as to whether the defendant is in custody because of the order or judgment
25 appealed; and
26

27 (b)(2)(D) a statement that the notice has been served on the opposing party and the method of
28 that service.
29

30 (b)(3) Deficiencies in the form of the filing ~~shall~~ will not cause the court to reject the filing. They
31 may, however, impact the efficient processing of the appeal.
32

33 (c) **Motion to reinstate period for filing appeal.**
34

35 (c)(1) Upon a showing that a defendant was deprived of the right to appeal, the justice court ~~shall~~
36 must reinstate the ~~thirty-day~~ 28-day period for filing an appeal. A defendant seeking such
37 reinstatement ~~shall~~ must file a written motion in the justice court and serve the prosecuting
38 entity. The court ~~shall~~ must appoint counsel if the defendant qualifies for court-appointed
39 counsel. The prosecutor ~~shall~~ must have 21 days after service of the motion to file a written
40 response. If the prosecutor opposes the motion, the justice court ~~shall~~ must set a hearing at which
41 the parties may present evidence. If the justice court finds by a preponderance of the evidence
42 that the defendant has demonstrated that the defendant was deprived of the right to appeal, it
43 ~~shall~~ must enter an order reinstating the time for appeal. The defendant's notice of appeal must be
44 filed with the clerk of the justice court within ~~30~~ 28 days after the date of entry of the order.
45

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

48
49 (d)(1) **Duties of the justice court.** Within 7 days of receiving the notice of appeal, the justice
50 court ~~shall~~ must transmit to the appropriate district court an appeal packet containing:

51
52 (d)(1)(A) the notice of appeal;

53
54 (d)(2)(B) the docket;

55
56 (d)(3)(C) the information or citation; and

57
58 (d)(4)(D) the judgment and sentence, if any; and.

59
60 (d)(5) Upon request from the district court the justice court must transmit to the district court
61 any other orders and papers filed in the case.

62
63 (e) **Duties of the district court.**

64
65 (e)(1) Upon receipt of the appeal packet from the justice court, the district court ~~shall~~ must hold a
66 scheduling conference to determine what issues must be resolved by the appeal. The district
67 court ~~shall~~ must send notices to the appellant at the address provided on the notice of appeal.
68 Notices to the other party ~~shall~~ must be served to the address provided in the justice court docket
69 for that party.

70
71 (e)(2) If the defendant is in custody because of the matter appealed, the district court ~~shall~~ must
72 hold the conference within 7 days of the receipt of the appeals packet. If the defendant is not in
73 custody because of the matter appealed, the court ~~shall~~ must hold the conference within 28 days
74 of receipt of the appeals packet.

75
76 (f) **District court procedures for trials de novo.** An appeal by a defendant pursuant to Utah
77 Code § 78A-7-118(1) shall be accomplished by the following procedures:

78
79 (f)(1) If the defendant elects to go to trial, the district court will determine what number and level
80 of offenses the defendant is facing.

81
82 (f)(2) Discovery, the trial, and any pre-trial evidentiary matters the court deems necessary, ~~shall~~
83 will be held in accordance with these rules.

84
85 (f)(3) After the trial, the district court ~~shall~~ must, if appropriate, sentence the defendant and enter
86 judgment in the case as provided in these rules and otherwise by law.

87
88 (f)(4) When entered, the judgment of conviction or order of dismissal serves to vacate the
89 judgment or orders of the justice court and becomes the judgment of the case.

90

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

93
94 (f)(5)(A) Any plea ~~shall~~ must be taken in accordance with these rules.

95
96 (f)(5)(B) The court ~~shall~~ must proceed to sentence the defendant or enter such other orders
97 required by the particular plea or disposition.

98
99 (f)(5)(C) When entered, the district court's judgment or other orders vacate the orders or
100 judgment of the justice court and become the order or judgment of the case.

101
102 (f)(5)(D) A defendant who moves to withdraw a plea entered pursuant to this section may only
103 seek to withdraw it pursuant to the provisions of Utah Code § 77-13-6.

104
105 (f)(6) Other dispositions. A defendant, at a point prior to entering a plea admitting guilt or a no
106 contest plea, or prior to commencement of trial, may choose to withdraw the appeal and have
107 the case remanded to the justice court. Within 14 days of the defendant notifying the court of
108 such an election, the district court shall remand the case to the justice court.

109
110 (g) **District court procedures for hearings de novo.** If the appeal seeks a de novo hearing
111 pursuant to Utah Code § 78A-7-118(3) or (4); ~~and~~

112
113 (g)(1) the court ~~shall~~ must conduct such hearing and make the appropriate findings or orders, and

114
115 (g)(2) within 14 days of entering its findings or orders, the district court ~~shall~~ must remand the
116 case to the justice court, unless the case is disposed of by the findings or orders, or the district
117 court retains jurisdiction pursuant to § 78A-7-118(6).

118
119 (h) **Retained jurisdiction.** In cases where the district court retains jurisdiction after disposing of
120 the matters on appeal, the court ~~shall~~ must order the justice court to forward all cash bail, other
121 security, or revenues received by the justice court to the district court for disposition. The justice
122 court ~~shall~~ must transmit such monies or securities within 21 days of receiving the order.

123
124 (i) **Other bases for remand.** The district court may also dismiss the appeal and remand ~~a~~ the
125 case to the justice court if it finds that the defendant has abandoned the appeal.

126
127 (j) **Justice court procedures on remand.** Upon receiving a remanded case, the justice court
128 ~~shall~~ must set a review conference to determine what, if any proceedings need be taken. If the
129 defendant is in custody because of the case being considered, such hearing ~~shall~~ must be had
130 within five days of receipt of the order of remand. Otherwise, the review conference should be
131 had within 28 days. The court ~~shall~~ must send notice of the review conference to the parties at
132 the addresses contained in the notice of appeal, unless those have been updated by the district
133 court.

134
135 (k) During the pendency of the appeal, and until a judgment, order of dismissal, or other final
136 order is entered in the district court, the justice court ~~shall~~ will retain jurisdiction to monitor

137 terms of probation or other consequences of the plea or judgment, unless those orders or terms
138 are stayed pursuant to Rule 27A.

139

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

141

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

144

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

146

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

148

149 (l)(2) The motion ~~shall~~ must be made within a reasonable time after entry of the order of
150 dismissal or remand.

151

152 Effective ~~May 1, 2017~~