

IN THE SUPREME COURT OF THE STATE OF ALASKA
ORDER NO. 1555

Amending Criminal Rules 32.2(d) & 39(b)(5), Appellate Rules 216(e), 217(c), 219(d), 604(a)(1)(B), 604(b)(1)(A), Note to Appellate Rule 604, Adoption Rule 3(f), CINA Rule 4(f), Delinquency Rule 4(f)(1), and Administrative Rule 9(d)(1) to change “cassette” to “electronic recording.”

IT IS ORDERED:

I. Criminal Rules 32.2(d) and 39(b)(5) are amended to change references to “cassettes” to “electronic recordings” as follows:

Rule 32.2. Sentencing Hearing.

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(d) **Transcript of Sentencing Proceeding.** A transcript or electronic recording of any sentencing proceeding at which the defendant is committed to serve a term of incarceration in excess of six months on one or more charges shall be prepared and furnished to the Department of Law, the defendant, the Department of Corrections, the State Board of Parole, if the defendant will be eligible for parole, and to the Alcohol Beverage Control Board if the defendant was convicted of a violation of AS 04, a regulation adopted under AS 04, or an ordinance adopted under AS 04.21.010.

Rule 39. Appointment of Counsel.

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(b) Appointment of Counsel for Persons Financially Unable to Employ Counsel.

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(5) If the trial court denies a defendant's request for appointed counsel, the defendant may request review of this decision by the presiding judge of the judicial district by filing a motion with the trial court within three days after the date of notice, as defined in Criminal Rule 32.3(c), of the denial. The trial court shall forward the motion, relevant materials from the court file, and an electronic recording of any relevant proceedings to the presiding judge. The presiding judge or his or her designee shall issue a decision within three days of receipt of these materials.

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II. Appellate Rules 216(e), 217(c), 219(d), 604(a)(1)(B), 604(b)(1)(A) are amended to change references to "cassettes" to "electronic recordings," and the Note to SCO 1238 at the base of Appellate Rule 604 is amended to clarify that electronic recordings other than cassettes are acceptable, as follows:

Rule 216. Expedited Appeals.

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(e) **Record on Appeal.** The entire superior court file shall serve as the record on appeal, together with an electronic recording of any hearing held in superior court if deemed necessary by the court of appeals.

Rule 217. Appeals from District Court.

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(c) Unless otherwise ordered by the court of appeals, the record on appeal shall consist of the entire district court file, together with recordings of the parts of the electronic record designated by the parties. Written transcripts may not be prepared except by order of the court of appeals. The papers in the record on appeal need not be numbered at the bottom consecutively. The clerk of the trial courts shall complete the preparation of the record on appeal within fifteen days from the date of filing the notice of appeal. Appellate Rule 210(c) shall not apply.

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Rule 219. Juvenile Appeals.

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(d) **Time for Completion of Record.** Rule 210 shall apply except that the time for completion of the transcript,

if ordered, and page numbering shall be within 30 days after filing the notice of appeal. The clerk of the trial courts shall take such steps as may be necessary to insure timely completion of records in cases under this rule, including but not limited to giving the preparation of transcripts in cases under this rule priority over the preparation of transcripts in criminal cases. However, unless otherwise ordered by the Court of Appeals, the record of the trial court proceeding will consist of electronic recordings rather than transcripts. Written transcripts may not be prepared except by order of the Court of Appeals.

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Rule 604. Record.

(a) Appeals from District Court.

(1) *Record on Appeal.*

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(B) The record of proceedings before the district court will include electronic recordings rather than transcripts unless the superior court orders the submission of transcripts. In the absence of an agreement between the parties or an order of the court to the contrary, all reasonable costs incurred in connection with preparing a transcript will be borne by the appellant.

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(b) **Appeals from Administrative Agencies.**

(1) *Record on Appeal.*

(A) The record on appeal consists of the original papers and exhibits filed with the administrative agency, and a typed transcript of the record of proceedings before the agency. In an appeal from the revocation of a driver's license by the Division of Motor Vehicles or from a prisoner disciplinary decision of the Department of Corrections, the record of proceedings will include electronic recordings rather than transcripts unless otherwise ordered by the court.

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Note to SCO 1238: Appellate Rule 604(b)(1)(A) was amended by ch. 79 § 23 SLA 1995 to allow the use of cassette tapes in prisoner disciplinary appeals. Section 11 of this order is adopted for the sole reason that the legislature has mandated the amendment. The clerk will also accept other forms of electronic recording, such as CDs.

III. Adoption Rule 3(f) is amended to change the reference to "cassette" to "electronic recording" as follows:

Rule 3. Appointment and Authority of Masters.

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(f) Objections to Master's Report, Recommendations. Objections to a master's report or recommendation must be filed within ten days of service of the report unless the court requires objections to be filed earlier. In the case of a recommendation rendered orally on the record where a party requests an electronic recording of the recommendation, the time period for objection runs from receipt of the recording. A reply to the objections must be filed within three days of service of the objections. The superior court may permit oral argument, order the taking of further evidence, or grant a hearing *de novo*.

IV. CINA Rule 4(f) is amended to change references to "cassette" to "electronic recording" as follows:

Rule 4. Appointment and Authority of Masters.

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(f) Objections to Master's Report, Recommendations.

(1) *Objections, Reply, Oral Argument.* Objections to a master's report or recommendation must be filed within 10 days of service of the report unless the court requires objection to be filed earlier. In the case of a recommendation rendered orally on the record where a party requests an electronic recording of the recommendation, the time period for objection runs from

receipt of the recording. A reply to the objections must be filed within three days of service of the objections. The superior court may permit oral argument, order the taking of further evidence, or grant a hearing de novo.

V. Delinquency Rule 4(f)(1) is amended to change references to “cassette” to “electronic recording” as follows:

Rule 4. Appointment and Authority of Masters.

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(f) Objections to Master’s Report, Recommendations.

(1) *Objections, Reply, Oral Argument.* Objections to a master’s report or recommendation must be filed within 10 days of entry of the findings or service of the report unless the court requires objection to be filed earlier. In the case of a recommendation rendered orally on record where a party requests an electronic recording of the recommendation, the time period for objection runs from receipt of the recording. A reply to the objections must be filed within three days of service of the objections. The superior court may permit oral argument, order the taking of further evidence, or grant a hearing de novo.

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VI. Administrative Rule 9(d)(1) is amended to change references to “cassette transcripts” to “electronic transcripts,” and to eliminate the reference to 90-minute cassette tapes, as follows:

Rule 9. Fee Schedule

(d) Transcript and Related Fees:

- | | |
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| (1) Electronic transcripts, other than electronic transcripts of sentencing proceedings provided pursuant to Criminal Rule 32.2(f), each recording | 10.00 |
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DATED: July 22, 2004

EFFECTIVE DATE: October 15, 2004

Chief Justice Bryner

Justice Matthews

Justice Eastaugh

Justice Fabe

Justice Carpeneti