

**IN THE SUPREME COURT OF FLORIDA**

THE FLORIDA BAR RE  
PETITION TO AMEND RULES  
REGULATING THE FLORIDA BAR

CASE NO. SC04-914

**COMMENTS IN OPPOSITION TO THE INCLUSION OF ASSISTANT  
STATE ATTORNEYS IN THIS PROPOSED PETITION TO AMEND  
THE RULES REGULATING THE FLORIDA BAR**

The Florida Prosecuting Attorneys Association, Inc., a not-for-profit corporation, has as its members the twenty elected constitutionally established State Attorneys of Florida and some seventeen hundred assistants, requests this Court to not include the Assistant State Attorneys in this proposed rule. The Young Lawyers Division of The Florida Bar (YLD), although well intended, seems to lump all government lawyers in the same category merely because they're paid for by some government. In truth and fact, assistant state attorneys, as outlined by the laws of Florida and the Rules Regulating The Florida Bar are indeed distinct and different. A quote from the comment on Rule 4-3.8, Responsibilities of a Prosecutor, states,

“A prosecutor has the responsibility of a minister of justice and

not simply that of an advocate. This responsibility carries with it specific obligations such as making a reasonable effort to assure that the accused has been advised of the right to and the procedure for obtaining counsel and has been given a reasonable opportunity to obtain counsel so that guilt is decided upon the basis of sufficient evidence. Precisely how far the prosecutor is required to go in this direction is a matter of debate. Florida has adopted the American Bar Association Standards of Criminal Justice Relating to Prosecution Function. This is the product of prolonged and careful deliberation by lawyers experienced in criminal prosecution and defense and should be consulted for further guidance.”

Recognizing the distinctions, the Florida Prosecuting Attorneys Association (FPAA) has, for more than thirty-five years, supplied Assistant State Attorneys with continuing legal education with special emphasis on ethics and professionalism.

Assistant State Attorneys continue to have among the highest case loads in America and actually subsidize the citizens of the State of Florida by their working overtime, at night and on weekends in order to serve the public. These courses on professionalism and ethics through the FPAA are taught through their offices, at seminars in their home cities or close by and are done on a continuing basis with the materials involved circulated amongst the twenty State Attorneys Offices. The materials attached to these comments are but a brief amount of those that have been made available and are made available to Assistant State Attorneys in the recent calendar year. Exhibit A demonstrates the FPAA education calendar

for Fiscal Year 2003-2004. These seminars are sanctioned by The Florida Bar and credit is given in the categories of General and Continuing Legal Education credits as well as Ethics and Professionalism.

Since a Prosecutor has the responsibility of both administering justice and not simply that of an advocate, it is extraordinarily important that these matters be presented so that the immense power of the State and the responsibility given to Prosecutors can be ameliorated with the professionalism of the individuals involved. An example of the type of training we give our people is best stated by a frequent lecturer, Chief Assistant State Attorney Ted S. Booras, in his presentation which is given not only to his office but is made available statewide entitled, "Prosecutorial Powers and Professionalism." (See Exhibit B attached hereto)

The main theme of our effort statewide for our Assistant State Attorneys is, "Ethics is that which is required and professionalism is that which is expected." Evanoff v. Evanoff, 262 Ga. 303, 418 S.E.2d 62 (Ga. 1992) Our administration of justice is bound by many different and distinct rules not placed on the requirements of other lawyers who practice in Florida. Brady v. Maryland, 373 U.S. 83, S. Ct. 1194, 10 L.Ed. 2d 215 (1963) held that the suppression by the prosecution of evidence favorable to the accused upon request violates due

process when evidence is material either to guilt or to punishment irrespective of good faith or bad faith of the prosecution. These are among the extraordinarily important responsibilities placed on the Prosecutor. The handling of cases in a professional way must constantly be placed before Assistant State Attorneys particularly those beginning in the practice. An example, of our in-depth approach to this very important responsibility is displayed this year in “Discovery And Brady Responsibilities” by Charles B. Morton, Jr., Assistant State Attorney, Homicide Division, 17<sup>th</sup> Judicial Circuit, Broward County, Fort Lauderdale, Florida. These materials were not only given to his office but are made available to new Assistant State Attorneys statewide. Again, these matters are circulated not only through the FPAA but through each office on a statewide basis. (See Exhibit C attached)

Another concern historically noted by this Court, as a professional problem with Prosecutors, has been closing argument. We would note that in some recent times these problems seem to be occurring less and less. Perhaps it is because of the very excellent education program performed by the FPAA and the twenty State Attorneys Offices around the State. An example of the in-depth approach made to this professional issue is by Angela B. Corey, Assistant State Attorney, Fourth

Judicial Circuit, in her materials, which have been supplied, presented through each individual office as well as through the FPAA. You'll note in her opening remark which is drilled into the heads of young Prosecutors is the theme of "Persuasive" What it means for prosecutors! Beginning with the letter "P" for Professional, which is described as "Exhibiting a courteous, conscientious, and generally businesslike manner in the workplace." In the second letter "E" is Ethical, which says that your argument should be "within the bounds of fair play and the rules of professional conduct." So certainly, we are doing more than an adequate job as far as the professionalism involved in closing argument. The diminished criticism from this Court and other Courts around this State is evidence that this is being productive. (See Exhibit D attached hereto)

Part of the Prosecutor's responsibility is recognizing his client is the State of Florida, however, we deal very closely with all victims of crime. Victims rights are constitutionally guaranteed. The prosecutor has a particular professional and ethical component required in his/her handling of victims and their rights. We teach this as well through our FPAA educational projects as well as distribution amongst the twenty State Attorneys through their networking which is very well designed between the twenty circuits. (See Exhibit E attached) One of the real professional issues with Assistant State Attorneys which is unlike any other

lawyer, is we deal with the media on a day-to-day basis as public servants. The professional conduct required in this matter is an interesting tight rope walk and we are constantly drilling our new Assistant State Attorneys about these rules of professional conduct as well as reminding our seasoned Prosecutors of the same. We again remind them of the admonition of Time Publishing v. State, 632 So.2d 1072 (4DCA 1994), “It is not asking too much to suggest that those who exercise First Amendment rights in newspapers and broadcasting enterprises direct some effort to protect the rights of an accused to a fair trial by unbiased jurors.” (See Exhibit E attached)

We recognize The Florida Bar has compelling interest in informing all of its new members of vital information and explanations as to their practice of law in Florida. We are not asking to be excepted from that responsibility. Paragraph 16, page 10 of the Petition to Amend the Rules Regulating the Florida Bar, the Young Lawyers Division states, “No area of practice should be excepted from attending the course or, worse, permitted to present its own professionalism course in place of the YLD’s course, because such an exception would encourage other sections and substantive areas of practice to seek to create their own program.” The FPAA and the State Attorneys of Florida, for at least thirty-five years, have already conducted their own programs in Ethics and Professionalism. The Young

Lawyers Division refers to this Professionalism as a new movement. For us, it has always been a way of doing business. We have from the very beginning been placed with more responsibilities in our area of practice than anyone else in the practice of law because of the powers given to State Attorneys and Assistant State Attorneys by virtue of their existence under the Constitution and laws of Florida. The YLD's aspirational goal of a one day course to foster a community of professionalism which spans into practice areas, although well meaning, would be a redundant and unnecessary experience for Assistant State Attorneys. In this time of tight budgets we have a high turnover rate. For us to send our Assistant State Attorneys to a one day seminar costing \$135.00 a head for matters that have already been covered and continue to be covered on a daily basis would be a waste of taxpayer's money. A recent tally shows that we have, in a little over one year, 418 new prosecutors. To send these folks would require \$56,430.00 to be paid to the Young Lawyers Division.

In paragraph 13, page 9 of the Petition, the Young Lawyers Division seems to place great weight in the fact that the Government Lawyers Section (very few if any of our people are members), the City, County and Local government law Section (none of which our people are members), criminal law section (which some of our people are members), the Council of Sections (none of our people are

members) and the Florida Public Defenders do not oppose this amendment. None of these categories of attorneys are described by The Florida Bar Rules and Notes as being “ministers of justice.” We are different, we are placed with a higher standard of conduct than others. We must have more than just a 1-day shot at professionalism for our young lawyers. We meet this need and we do so without further expense to the state and to our people. We should not be forced into a redundant 1-day experience.

WHEREFORE, the Florida Prosecuting Attorneys Association, Inc. and the State Attorneys of Florida requests this Court to not include Assistant State Attorneys within this rule amendment and we further request oral argument in this matter.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing has been furnished to  
John F. Harkness, Jr., P.O. Box 389, Tallahassee, FL 32302-0389, Miles A.  
McGrane, III, 2801 Ponce De Leon Blvd., #1200, Coral Gables, FL 33134-6924,  
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11300, Tallahassee, FL 32302-3300, Mark Romance, Richman, Greer & Wiel,  
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5833, Paul F. Hill, General Counsel, The Florida Bar, 650 Apalachee Parkway,  
Tallahassee, FL 32399-6584 this \_\_\_\_\_ day of June, 2004.

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Arthur I. Jacobs

**CERTIFICATE OF TYPE SIZE AND STYLE**

I HEREBY CERTIFY that this comment is typed in 14-point Times New Roman Regular Type.

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Arthur I. Jacobs