

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC05-1091

IN RE: AMENDMENTS TO THE FLORIDA RULES OF CIVIL PROCEDURE, THE FLORIDA RULES OF CRIMINAL PROCEDURE, THE STANDARD JURY INSTRUCTIONS IN CIVIL CASES, AND THE STANDARD JURY INSTRUCTIONS IN CRIMINAL CASES – IMPLEMENTATION OF JURY INNOVATIONS COMMITTEE RECOMMENDATIONS, PROPOSED AMENDMENTS TO THE FLORIDA RULES OF CRIMINAL PROCEDURE PROPOSED BY CRIMINAL COURT STEERING COMMITTEE

COMMENT OF THE FLORIDA BAR CRIMINAL PROCEDURE RULES COMMITTEE ON PROPOSAL TO PROVIDE THE STATE WITH INITIAL CLOSING ARGUMENT AND REBUTTAL CLOSING ARGUMENT IN ALL CRIMINAL TRIALS

John F. Harkness, Jr., Executive Director of The Florida Bar, and George Euripedes Tragos, 2005-2006 Chair of The Florida Bar Criminal Procedure Rules Committee (“the committee”), file this comment with regard to the amendments proposed by the Supreme Court’s Criminal Court Steering Committee to repeal part of Florida Rule of Criminal Procedure 3.250 and to supersede it with newly created Florida Rule of Criminal Procedure 3.381 to provide the State of Florida with initial closing argument and rebuttal closing argument in all criminal trials.

PROCEDURAL HISTORY

The comment in this report was approved by a majority of the committee’s Fast Track Subcommittee. *See* Appendix A (Fast Track Subcommittee Supplemental Subcommittee Action Report). Because the subcommittee vote was not unanimous, a “majority” and “minority” report were prepared. The Fast Track Subcommittee

“Majority” Report is attached as Appendix B. The Fast Track Subcommittee
“Minority” Report is attached as Appendix C.

The subcommittee recommendations were then reported to the full committee by e-mail, pursuant to the committee’s Internal Operating Procedures. By e-mail vote, 11 committee members approved the recommendations, and 3 opposed.

COMMENT

The committee supports, in concept, the Steering Committee’s proposals and recommendation. However, given the instance where a prosecuting attorney waives closing argument, as well as the unique procedure involved in the sentencing phase in capital cases, the committee recommends the following alternative language with regard to proposed rule 3.381:

Proposed Rule 3.381 (Final Arguments)

In all criminal prosecutions, excluding the sentencing phase of a capital case, at the close of the evidence the prosecuting attorney shall be entitled to a closing argument and a rebuttal closing argument before the jury or the court sitting without a jury. Failure of the prosecuting attorney to make a closing argument shall not deprive the defense of its right to make a closing argument, or the prosecuting attorney of the right to then make a rebuttal argument.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

Respectfully submitted on April _____, 2006, by

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