

**IN THE SUPREME COURT OF FLORIDA  
CASE NO. SC05-1091**

**IN RE: AMENDMENTS TO THE  
RULES OF CIVIL PROCEDURE,  
THE FLORIDA RULES OF CRIMINAL  
PROCEDURE, THE STANDARD JURY  
INSTRUCTIONS IN CIVIL CASE, AND  
THE STANDARD JURY INSTRUCTIONS  
IN CRIMINAL CASES - IMPLEMENTATION  
OF JURY INNOVATIONS COMMITTEE  
RECOMMENDATIONS**

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**COMMENTS OF THE FLORIDA PROSECUTING ATTORNEYS  
ASSOCIATION, INC.**

The Florida Prosecuting Attorneys Association, Inc., by and through its undersigned counsel, hereby presents the following comments regarding the above captioned case. These comments particularly address Rule 3.250. Accused as Witness as amended and Rule 3.381. Final Arguments as amended.

The Florida Prosecuting Attorneys Association, Inc. is in favor of these two rules as amended as recommended by Administrative Order, In Re: Final Report of the Jury Innovations Committee, Florida Administrative Order No. AOSC03-4, October 17, 2003.

The common law in criminal and civil cases has granted the right to final argument to the party bearing the burden of proof. The State of Florida has the burden of proving guilt beyond a reasonable doubt in criminal cases. Federal Rule of Criminal Procedure 39.1 states, ¶After the closing of evidence, the prosecution shall open the argument. The defense shall be permitted to reply. The prosecution shall then be permitted to reply and

rebuttal.@

Diaz v. State, 747 So.2d 1021, 1025 (Fla. 3<sup>rd</sup> DCA 1999) states in their urging that a change be made in the current Florida Rule, the Court said as follows:

APresently in the United States, forty-six states, the District of Columbia and all United States District Courts allow the prosecution to close the final argument in criminal cases. Florida is one of only four states that have a rule which provides criminal defendants the right to close final arguments where the defendant presents no evidence other than his own testimony..... [W]e respectfully suggest that the time has come for our Supreme Court to revisit the wisdom of this provision.@

On behalf of the twenty State Attorneys and their eighteen hundred Assistant State Attorneys, we agree that the state has changed dramatically since the 1800's when the rule was first implemented and we agree that this change is long overdue. Respectfully submitted this \_\_\_\_\_ day of November, 2005.

JACOBS & ASSOCIATES, P.A.

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has been furnished by U.S. Mail on this \_\_\_\_\_ day of November, 2005 to: Adrienne Frischberg Promoff, 44 West Flagler Street, Suite 2100, Miami, FL 33130-6807; Aubrey George Rudd, 7901 Southwest 67<sup>th</sup> Avenue, Suite 206, South Miami, FL 33143-4538; George Euripedes Tragos, 600 Cleveland Street, Suite 700, Clearwater, FL 33755-4158; Judge Winifred J. Sharp, Fifth District Court of Appeal, 300 S. Beach Street, Daytona Beach, FL 32114-5002; Judge Dedee Costello, P.O. Box 1089, Panama City, FL 32402; Judge Chris W. Alternbernd, 2<sup>nd</sup> District Court of Appeal, 1700 N. Tampa Street, Suite 300, Tampa, FL 33602; and Judge O.H. Eaton, Seminole County Courthouse, 301 N. Park Avenue, Sanford, FL 32771-1243.

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**CERTIFICATE OF FONT SIZE**

I hereby certify that this brief has been prepared using Times New Roman 14

point font in compliance with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

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