

**IN THE SUPREME COURT OF FLORIDA
CASE NO. SC06-2065**

**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, PROPOSED
AMENDMENTS TO THE FLORIDA RULES
OF CRIMINAL PROCEDURE PROPOSED
BY CRIMINAL COURT STEERING COMMITTEE**

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

The Florida Prosecuting Attorneys Association, Inc. (FPAA), by and through its undersigned counsel, hereby presents the following comments regarding the above captioned case.

In its comments filed in SC05-1091, the FPAA was in favor of Rule 3.250 as amended and presented to the court. The FPAA is now supportive of the new Rule 3.381, Final Argument, presented to this court by The Florida Bar Criminal Rules Committee. The Common law in criminal 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. 3rd 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.@

The FPAA adopts and supports the position of the Criminal Procedure Rules Committee as recently filed by William C. Vose as Chairman of The Florida Bar Criminal Procedure Rules Committee. Furthermore, the FPAA desires to make the court aware that the Florida Senate, after deliberation by committees, by a 34-0 vote on May 2, 2006, passed House Bill 147 as amended. The Florida House of Representatives, after deliberation by committees, by a 115-0 vote on May 4, 2006, passed House Bill 147, as amended, repealing rule 3.250 to the extent that it is inconsistent with the bill and approving closing argument for prosecutors.

The premise of the prosecution having closing argument was the substance of this

legislation and the substance of the proposed rule as passed and presented by The Florida Bar Criminal Procedure Rules Committee to this court. Attached is a copy of the official vote tally of the Florida Senate and Florida House of Representatives.

CERTIFICATE OF SERVICE

I HEREBY certify that a copy of the foregoing has been furnished by U.S. Mail on this ____ day of January, 2007 to: William C. Vose, 1104 Bahama Drive, Orlando, FL 32806-1440, John F. Harkness, Jr., The Florida Bar, 651 East Jefferson Street, Tallahassee, FL 32399-2300 and Honorable C. Richard Parker, Florida Public Defender Association, Post Office Box 2820, Gainesville, FL 32602.

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