**IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT**
**IN AND FOR ST. LUCIE COUNTY, FLORIDA**

**IN RE: ALL PENDING ST. LUCIE COUNTY CIVIL JURY DIVISION CASES**

## STANDING ORDER RE: CLOSING ARGUMENT (CIVIL)

## PURPOSE

THIS ORDER is intended to assist the parties, trial counsel and the jury by ensuring, as much as reasonably possible, that the closing arguments in this cause will be presented properly, fairly and professionally.

## OVERVIEW

This Order is not intended as an exhaustive list, but as an illustration of the most frequent subjects of improper closing arguments.

Counsel should keep in mind that the Court has an independent and affirmative obligation to protect jurors from improper closing argument, even if unobjected to. D'Auria v. Allstate Insurance Co., 673 So.2d 147 (Fla. 5th DCA 1996); Borden v. Young, 479 So.2d 850 (Fla. 3d DCA 1985) ("It is no longer -- if it ever was -- acceptable for the judiciary to act simply as a fight promoter, who supplies an arena in which parties may fight it out on unseemly terms of their choosing and then, on the ground that the loser has asked for what he received, obediently raise the hand of the one who emerges victorious." Borden, 479 So.2d at 851.) If necessary to preserve the fundamental fairness of the proceeding, the Court may intercede -- even absent an objection -- if egregiously improper arguments are made in closing.

Improper closing argument continues to be a major problem that undermines public confidence in our system of justice. Counsel is reminded that it is "the ultimate

responsibility [of trial judges] to ensure proper behavior of trial counsel and fair trial proceedings in his or her courtroom" and it is their duty to curb improper argument to "ensur[e] that the jury [is] not being led astray." *R. J. Reynolds Tobacco Co. v. Calloway*, 201 So. 3d 753, 763 (Fla. 4th DCA 2016). This is especially important "in lengthy, high-stakes cases where a trial court's failure to control the litigants not only deprives the parties of a fair trial, but can ultimately result in scarce judicial resources being consumed when the case is remanded for retrial based on these actions." *Id.* A trial judge should respond to such improper argument in a timely and consistent manner, and issue proportional rebukes when repeated instances occur." *Id.* When improper opening statements or closing arguments are repeated, the rebukes may be administered in front of the jury.

Counsel is reminded that if improper behavior continues, the trial judge has the option to use indirect civil contempt monetary sanctions for repeated violations of court rulings. *See, e.g., Moakley v. Smallwood,* 826 So. 2d 221, 226 (Fla. 2002) (holding that a trial court possesses the inherent authority to impose attorney's fees against an attorney for bad faith conduct).

Counsel should not refrain from objecting to improper argument by opposing counsel under the belief that this Court will then be obligated to permit counsel to offer equally improper arguments under the concept of "fair reply." Counsel has an obligation to object to improper argument. *Fryer v. State*, 693 So.2d 1046 (Fla. 3d DCA 1997) (Sorondo, J. concurring).

Absent any order to the contrary by this Court, counsel's closing argument shall conform to the restrictions contained in this Order. If counsel is uncertain whether a particular argument may violate this Order (or might otherwise be improper under existing caselaw) counsel should seek the guidance of the Court prior to presenting the argument to the jury.

## IMPROPER ARGUMENT

THIS CAUSE having come on for trial, this Court hereby orders all counsel to abide by the following restrictions during their closing arguments, absent any order to the contrary by this Court:

1. Counsel is reminded that the purpose of closing argument is to help the jury understand the issues in a case by "applying the evidence to the law applicable to the case." *Mayo v. Gazarosian*, 727 So. 2d 1140 (Fla. 5th DCA 1999); *Airport Rent-A-Car, Inc. v. Lewis*, 701 So. 2d 893 (Fla. 4th DCA 1997); *Cohen v. Pollack*, 674 So. 2d 805 (Fla. 3d DCA 1996); Florida Rule of Professional Conduct 4-3.4(e). *Hill v. State*, 515 So.2d 176, 178 (Fla. 1987). *See also, McGee v. State*, 83 So.3d 837 (Fla. 4 D 2011) (quoting, *Fleurimond v. State*, 10 So.3d 1140, 1148 (Fla. 3d DCA 2009)) ("The purpose of closing argument is to present a review of the evidence and suggestions for drawing reasonable inferences from the evidence."); *Gonzalez v. State* 990 So.2d 1017 (Fla. 2008) ("The proper exercise of closing argument is to review the evidence and to explicate those inferences which may reasonably be drawn from the evidence.").

2. Counsel should be afforded great latitude in presenting closing argument, but they must "confine their argument to the facts and evidence presented to the jury and all logical deductions from the facts and evidence." *Knoizen v. Bruegger,* 713 So. 2d 1071, 1072 (Fla.5th DCA 1998); *see also Venning v. Roe*, 616 So. 2d 604 (Fla. 2d DCA 1993). In addition, counsel must not use closing argument to "inflame the minds and passions of the jurors so that their verdict reflects an emotional response…rather than the logical analysis of the evidence in light of the applicable law." *Bertolotti v. State*, 476 So. 2d 130, 134 (Fla. 1985).

3. Counsel shall not comment upon irrelevant matters unrelated to the evidence presented at trial. The purpose of closing argument is disserved when comment upon irrelevant matters is permitted. *See Hernandez v. State*, 960 So.2d 816 (Fla. 3 DCA 2007).

4. Counsel shall not express their personal opinion or beliefs regarding any aspect of the evidence or testimony,[1] or personally bolster or vouch for the credibility of any witness or party in this cause. *Mayo v. Gazarosian*, 727 So. 2d 1140 (Fla. 5th DCA 1999); *Airport Rent-A-Car, Inc. v. Lewis*, 701 So. 2d 893 (Fla. 4th DCA 1997); *Cohen v. Pollack*, 674 So. 2d 805 (Fla. 3d DCA 1996); Florida Rule of Professional Conduct 4-3.4(e).

5. Counsel shall refrain from expressing personal knowledge of facts in issue or personal opinion as to the justness of the cause, the credibility of a witness or the culpability of a civil litigant. *Muhammad v. Toys "R" Us*, 668 So. 2d 254 (Fla. 1st DCA 1996); *Miami Coin-O-Wash v. McGough*, 195 So. 2d 227 (Fla. 3d DCA 1967).

6. Counsel shall not denigrate or impugn the integrity of opposing counsel. Examples of this are accusing counsel of "trickery", "hiding the ball", filing a frivolous law suit, fabricating evidence, using "smoke and mirrors", or creating a "work of fiction". *Owens Corning Fiberglass Corp. v. Crane*, 683 So. 2d 552 (Fla. 3d DCA 1996); *Owens Corning Fiberglass Corp. v. Morse*, 653 So. 2d 409 (Fla. 3d DCA 1995).

7. Counsel shall avoid using derogatory terms when referring to the opposing party, a witness, or opposing counsel and shall not make any disparaging comments about counsel's occupation or performance in court. *All-Site Corp. v. Delia Croce*, 647 So. 2d 296 (Fla. 3d DCA 1994); *Bellsouth v. Colatarci*, 641 So. 2d 427 (Fla. 4th DCA 1994).

8. Counsel shall not denigrate or impugn the integrity of another party or a witness. Examples of this are referring to an expert as "the best money could buy", a "hired gun", having a "special relationship" with counsel, giving "magic testimony", using "smoke and mirrors", throwing "pixie dust", referring to a party as having "lawsuit pain". *King v. Byrd,* 716 So. 2d 831 (Fla. 4th DCA 1998); *Venning v. Roe*, 616 So. 2d 604 (Fla. 2d DCA 1993);

[1] Phrases such as "I think", "I believe" or "I submit" are generic figures of speech which, standing alone, are not improper and generally may be used in the course of closing argument. *Murphy v. International Robotic Systems, Inc.*, 766 So. 2d 1010 (Fla. 2000); *Lowder v. Economic Opportunity Family Health Center, In*c., 680 So. 2d 1133 (Fla. 3d DCA 1996); *Forman v. Walshein*, 671 So. 2d 872 (Fla. 3d DCA 1996).

*George v. Mann*, 622 So. 2d 151 (Fla. 3d DCA 1993); *All-Site Corp. v. Delia Croce*, 647 So. 2d 296 (Fla. 3d DCA 1994); *Walt Disney World Co. v. Blaylock*, 640 So. 2d 1156 (Fla. 5th DCA 1994); *Carnival Cruise Lines, Inc. v. Rosania*, 546 So. 2d 736 (Fla. 3d DCA 1989).

9. Counsel shall not argue at a party or witness fabricated evidence or has lied, absent record evidence to support such an argument. Counsel is strongly cautioned in this regard and should seek guidance from the Court before making any such argument to the jury. *Owens Corning Fiberglass Corp. v. Crane*, s*upra*; *Forman v. Wallshein*, 671 So. 2d 872 (Fla. 3d DCA 1996). If counsel believes that the record supports the argument that the witness lied on the witness stand, then counsel shall demonstrate the same at sidebar prior to making the argument.

10. If there is record evidence to support the argument that a witness lied in testimony, such argument shall be restricted to characterizing the witness' testimony and counsel shall not engage in character assassination nor argue or imply that the witness is a chronic, habitual or pathological liar. *Forman v. Wallshein*, *supra*.

11. Counsel shall refrain from commenting on objections made by opposing counsel. *Knight v. State*, 672 So. 2d 590 (Fla. 4th DCA 1996); *Sanchez v. Bengochea*, 573 So. 2d 992 (Fla. 3d DCA 1991).

12. Counsel shall not suggest to the jurors that they represent the "conscience of the community" or urge the jury by its verdict to "send a message" to a party or to anyone else. *State Farm Mut. Auto. Ins. Co. v. Revuelta*, 901 So. 2d 377 (Fla. 3d DCA 2005); *Kloster Cruise Ltd. v. Grubbs*, 762 So. 2d 552 (Fla. 3d DCA 2000); *D'Auria v. Allstate Insurance Co.*, 673 So. 2d 147 (Fla. 5th DCA 1996); *Kiwanis Club of Little Havana, Inc. v. Kalafe*, 723 So. 2d 838 (Fla. 3d DCA 1998); *Maercks v. Birchansky*, 549 So. 2d 199 (Fla. 3d DCA 1989).

13. Counsel shall not attempt to sway the jury by playing upon juror's sympathy, fears, biases or prejudices. *Kiwanis Club of Little Havana, Inc. v. Kalafe*, *supra*; *Russell, Inc. v.*

*Trento*, 445 So. 2d 390 (Fla. 3d DCA 1984); *Levin v. Hanks*, 356 So. 2d 21 (Fla. 4th DCA 1978).

14. Counsel shall avoid making arguments intended to improperly elicit prejudice, sympathy or excessive emotion from the jury. *Walt Disney v. Vlatock*, 640 So. 2d 1156 (Fla. 5th DCA 1994); *Fowler v. N. Goldring Corp.*, 582 So. 2d 802 (Fla. 1st DCA 1991).

15. Counsel shall not attempt to evoke images of "runaway verdicts", assert that a claim or defense is "frivolous", characterize plaintiff's case as "cashing in on a lottery ticket" or argue that the judicial system is "out of control." *Murphy v. International Robotic Systems Inc.*, 766 So. 2d 1010 (Fla. 2000); *Norman v. Gloria Farms, Inc.,* 668 So. 2d 1016 (Fla. 4th DCA 1996); *Bellsouth Human Resources Admin., Inc. v. Colatarci*, 641 So. 2d 427 (Fla. 4th DCA 1994).

16. Counsel shall not argue that it is common in closing argument for a plaintiff to ask for more money than they think they are entitled to, or to ask for much more money than they think a jury would actually award. *Donaldson v. Cenac*, 675 So. 2d 228 (Fla. 1st DCA 1996); *Leberge v. Vancleave*, 534 So. 2d 1176 (Fla. 5th DCA 1988); *Hartford Accident and Indemnity Co. v. Ocha*, 472 So. 2d 1338 (Fla. 4th DCA 1985).

17. Counsel's arguments and comparisons should have some logical nexus in deduction or analogy to the evidence and facts in the instant case. *Wright & Ford Millworks v. Long*, 412 So. 2d 892 (Fla. 5th DCA 1982) (i.e. no references to famous people or well-known verdicts).

18. Counsel shall not attempt to argue facts not in evidence or imply that counsel is aware of the existence of evidence or testimony not introduced at trial. *Ruiz v. State*, 743 So. 2d 1 (Fla. 1999); *Carroll v. Dodsworth*, 565 So. 2d 346 (Fla. 1st DCA 1990); *Maercks v. Birchansky*, 549 So. 2d 199 (Fla. 3d DCA 1989); *Carnival Cruise Lines, Inc. v. Rosania*, *supra*; Florida Rule of Professional Conduct 4-3.4(e).

19. Counsel shall avoid making arguments that are not based on facts in evidence or reasonable inferences that can be drawn therefrom. *Baptist Hospital v. Rawson*, 674 So. 2d 777 (Fla. 1st DCA 1996); *Cardona v. Gutierrez*, 562 So. 2d 766 (Fla. 4th DCA 1990).

20. Counsel shall not argue what other lawyers, parties, witnesses or juries have done in other cases, if such evidence has not been properly introduced at trial. *Baptist Hospital Inc. v. Rawson*, 674 So. 2d 777 (Fla. 1st DCA 1996); *Martino v. Metropolitan Dade County*, 655 So. 2d 151 (Fla. 3d DCA 1995); *Walt Disney World v. Blaylock*, *supra*; *Silva v. Nightingale*, 619 So. 2d 4 (Fla. 5th DCA 1993).

21. Counsel shall not make any comments regarding a prior settlement with a former party to the case. *Muhammed v. Toys "R" Us, Inc.,* 668 So. 2d 254 (Fla. 1st DCA 1996); Fla. Stat. §768.041.[2]

22. Counsel shall not make reference to any settlement offers made to an opposing party or the existence or nature of any settlement discussions. *Sullivan v. Galske*, 917 So. 2d 412 (Fla. 2d DCA 2006); Fla. Stat. §90.408.

23. Counsel shall not ask the jury to consider the relative wealth or financial conditions of the parties, or ask the jury to consider how a verdict might impact a party's economic, employment or professional status.[3] *State Farm Mut. Auto. Ins. Co. v. Revuelta*, *supra*; *Sossa by and through Sossa v. Newman*, 647 So. 2d 1018 (Fla. 4th DCA 1994); *Ballard v. American Land Cruisers, Inc.*, 537 So. 2d 1018 (Fla. 3d DCA 1988); *Klein v. Herring*, 347 So. 2d 681 (Fla. 3d DCA 1977); *Pierce v. Smith*, 301 So. 2d 805 (Fla. 2d DCA 1974).

24. Counsel shall not ask the jury to consider how a verdict might impact the jurors themselves or the community in general. *Norman v. Gloria Farms, Inc, supra.*

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[2] There may be rare instances in which such evidence might be admissible at trial. *See*, *e.g. State Farm Mut. Auto. Ins. Co. v. Williams*, 943 So. 2d 997 (Fla. 1st DCA 2006) (distinguishing between joint tortfeasors and subsequent tortfeasors). If such evidence is properly before the jury, it may of course be argued in closing argument to the extent it is relevant.

[3] The Court recognizes that, under limited circumstances, such an argument might be relevant and proper. *See e.g., Wransky v. Dalfo*, 801 So. 2d 239 (Fla. 4th DCA 2001) (claim for punitive damages).

25. Counsel shall not urge the jury to draw an adverse inference from the failure of the opposing party to call a non-party witness unless the proper showing has first been made with the court. *Lowder v. Economic Opportunity Family Health Center*, 680 So. 2d 1133 (Fla. 3d DCA 1996); *Cf*. *FP&L v. Goldberg*, 856 So. 2d 1011 (Fla. 3d DCA 2002) (applying different rule regarding the failure to call a party as a witness); *Fino v. Nodine*, 646 So. 2d 746 (Fla. 4th DCA 1995) (same).

26. Counsel shall not comment upon the presence or absence of insurance coverage, or comment on whether a party would or would not be responsible for paying any amount awarded. *Nicaise v. Gagnon*, 597 So. 2d 305 (Fla. 4th DCA 1992); *Ballard v. American Land Cruisers, Inc., supra*; *Skislak v. Wilson*, 472 So. 2d 776 (Fla. 3d DCA 1985).

27. Counsel shall not ask jurors to place themselves in the shoes of a party or ask jurors to view evidence from a party's perspective, especially on the issue of financial responsibility or in determining the amount of damages which ought to be awarded. *Metropolitan Dade County v. Zapata*, 601 So. 2d 239 (Fla. 3d DCA 1992); *Coral Gables Hospital Inc. v. Zabala*, 520 So. 2d 653 (Fla. 3d DCA 1988).

28. Counsel shall avoid making arguments that place the jury or ask the jury to place itself in the place of the plaintiff or defendant. *Goutis v. Express Transport, Inc.*, 699 So. 2d 757 (Fla. 4th DCA 1997); *Metropolitan Dade County v. Zapata*, 601 So. 2d 239 (Fla. 3d DCA 1992); *See also, Simmonds v. Lowery*, 563 So. 2d 183 (Fla. 4th DCA 1990) ("a golden rule argument suggests to jurors that they put themselves in the shoes of one of the parties, and is impermissible because it encourages the jurors to decide the case on the basis of personal interest and bias rather than on the evidence.").

29. Counsel shall not make any arguments that misstate the law or that mislead the jury. *City Provisioners, Inc. v. Anderson*, 578 So. 2d 855 (Fla. 5th DCA 1991); *Craft v. Kramer*, 571 So. 2d 1337 (Fla. 4th DCA 1990).

30. Counsel shall not suggest to the jury that they should place a monetary value on a human life in the same manner as a monetary value is placed on a 10 million dollar work of art or an 18 million dollar jetliner. *Public Health Trust of Dade County v. Geter*, 613 So. 2d 126 (Fla. 3rd DCA 1993).

31. Counsel shall not suggest to the jury that the court can reduce or increase any damage award the jury returns. *City Provisioners, Inc. v. Anderson, supra*.

DONE AND ORDERED in Chambers at Fort Pierce, St. Lucie County, Florida, on this 9th day of May, 2025.

CHARLES A. SCHWAB
CIRCUIT JUDGE