

# The Third DCA Clarifies The Bounds of Opening Statements and Final Arguments

August 05, 2010

August 4, 2010, the Third District Court of Appeal issued its decision in *Chin v. Caiaffa*, Case No. 3D08-176, --- So. 3d ----, 2010 WL 3023297 (Fla. 3d DCA Aug. 4, 2010). *Chin* reiterates the appropriate bounds of advocacy that apply during opening statements and final arguments. In no uncertain terms, the district court warned counsel that it is legally and ethically impermissible to:

- Try one's case through an opening statement;
- Allude to "facts" during an opening statement that counsel cannot later prove through admissible evidence;
- Reference a party's wealth or poverty when this fact is not relevant to any material issue;
- Appeal directly to the jury's sympathy;
- Offer "Golden Rule" arguments that entice jurors to place themselves in the plaintiff's position;
- Stray from the evidence during final argument;
- Attack a party and counsel by telling the jurors that the other side has attempted to fool them through a frivolous claim or defense;
- Attack a party and its counsel during final argument by insinuating that the claim or defense presented was a sham or a lie.

As a result of plaintiff's counsel's failure to adhere to these rules in *Chin*, the Third District reversed a nearly \$1.4 million plaintiff's verdict and remanded for a new trial.

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