

Time to Revisit Trial Strategy as Florida Supreme Court Changes Final Authority on Jury Instructions

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by Jasmine Floyd

Shook, Hardy & Bacon Miami Managing Partner Dan Rogers will be chair of the Florida Supreme Court’s Standard Jury Instructions in Civil Cases Committee starting January 2022.

Beyond just moving up from vice chair, Rogers’ new position will gain additional relevance, due to changes by the Florida Supreme Court last year, which will be of interest to lawyers on the civil side.

In 2020, the Florida Supreme Court changed the administration of jury instructions in civil cases. Courts used to be the final decision-maker, but they gave it to the committee, which now plays a more important role in getting jury instructions correct so that jurors understand litigants’ rights and responsibilities.

“Members of the committees of contracts and business cases

came to us, and told us that they thought it was time to revamp the standard instructions on jury instructions,” Rogers said. “We have been working hand-in-hand with them in that process, while coordinating and having joint meetings. It has been a very collaborative process.”

Rogers believes the change could be innovative for Florida.

“I take the view that this is something the Supreme Court has recognized as an important process to develop these standards or instructions. The Supreme Court also recognized that it is not necessarily their job to provide that type of guidance—standard jury instructions to the legal community,” Rogers said. “Their job is to decide certain controversies that come before it, and decide the law based upon the specific cases and controversies. So from my perspective it’s a good thing.”



Courtesy photo

Daniel B. Rogers managing partner with Shook, Hardy & Bacon.

Rogers saw other benefits as well.

“Now that the Jury Instruction Committee is making those final determinations itself without having to get it approved by the Supreme Court, it’s created a lot of finality and power to the proposals,” he said. “We are seeing plaintiffs and defendants who have stepped up and gotten more involved in the process.”

Courtesy photo



Michael A. Maugans of Pathman Lewis

So I'm not really seeing plaintiffs lawyers are getting more aggressive about it or the defense lawyers. We're really seeing it from everyone."

One of the reasons the Supreme Court wants to get out of the business of approving jury instructions is because the Court believes the instructions should be reviewed and endorsed by people more closely connected with the jury process.

"These should not be binding things that judges need to follow. These are just standard instructions that you can use in any particular case," Rogers said. "I think the Supreme Court got tired of seeing people making arguments that their approval of jury instructions were endorsements of the correctness of those instructions. Instead, they decided that it's better for them to decide those issues in the context of case or controversy to avoid those attorneys making those kinds of arguments that the instruc-

tions are an accurate statement of the law, simply because they have been approved by the Supreme Court."

Effect of social media

Miami attorney Michael Maugans of Pathman Lewis believes the changes might effect trial strategy.

"Many jurors are naturally going to be more swayed by scientific explanations in a trial. The Court's jury instructions as they stand certainly explain the threshold for weighing evidence. The rules need an unambiguous and delineated instruction as it comes to experts and their methodologies and validity of testimony," Maugans said. "A separate instruction for experts can only add clarity since many laymen jurors potentially presume expert testimony is unimpeachable. As with other forms of evidence, it is important that jurors weigh testimony against each other. Moreover, if only one side has an expert, the judge should instruct the jurors not to infer that the sole expert is the authority on the issue present in the litigation."

Maugan said clarifying the instructions is beneficial for the jurors. However, a more substantive instruction can have additional effect for attorneys planning their trial strategy.

Hinshaw & Culbertson Miami partner Ira Gonzalez



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Hinshaw & Culbertson partner Ira Gonzalez is a civil and commercial litigator in Coral Gables.

said he is interested in seeing improvements from the jury committee.

"Jury instructions should further promote inclusive, and productive communications between the respective jurors to avoid domination of the deliberation process by one or two jurors," Gonzalez said.

Gonzalez believes that with the explosion of social media in the past two decades, the platforms available for potential defamatory claims have expanded.

"Assisting a juror with proper and effective instructions in our ever evolving—and accessible—world would be an important area for further development," he said. "Further understanding the method of measuring damages in a defamation action will be a necessity to assist the juror in assessing what damage is compensable and quantifying reputational damage."