2019 APPELLATE PRACTICE
REGIONAL CLE PROGRAM MAY 16, 2019
Panel: Tricks of the Appellate Trade

Panel
Gerald B. Cope, Jr., Moderator
Honorable Robin Rosenbaum, Judge, United States Court of Appeals for the
Eleventh Circuit
Jane Kreusler-Walsh
Jeffrey Cohen
Joel S. Perwin

Topics:

1. What are the preservation errors or issues you most commonly see?

2. Can you reduce the preservation concept to a single principle, or group of principles? If so, what are they?

3. When advising trial counsel what they must do at trial from a preservation standpoint, what is on your absolute must-do list?

4. When you are attending a trial to provide appellate support, how do you divide the labor between the trial counsel and appellate counsel? For example, does trial counsel typically handle all of the oral advocacy, or are there issues which appellate counsel would normally argue, such as motions for directed verdict and argument on jury instructions?

5. When trial counsel needs access to the record for preservation purposes, like a sidebar to make an objection out of the hearing of the jury, and the judge isn't cooperating, how do you handle that?

6. From a preservation standpoint, what are the significant differences, if any, between state and federal court?
7. In brief writing, what are the techniques you can use to signal to the appellate panel that an issue has been preserved?

8. What are preservation issues now pending in the appellate courts that we should be aware of and watch for?

9. What do good trial lawyers hate to do, but need to do, from a preservation standpoint?

10. If the opponent at trial has made a significant error that may justify a mistrial, so trial counsel wants to make the motion for preservation purposes, but trial counsel likes the jury and doesn't want the motion to be granted, what should trial counsel do?

Dated: April 30, 2019