



# ATLANTA BAR ASSOCIATION

## LAWYERS WHO SERVE Litigation Section

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### **The Litigator** *Official Publication of the Atlanta Bar Association Litigation Section*

#### **Trial Preparation: The Grind is Worth It**

By Jeb Butler, *Butler Tobin LLC*



The hardest part of trial is trial preparation. Trial itself is exciting—nothing quickens a lawyer's heart like an adverse witness eviscerated or a juror nodding along

in closing argument. Although we lawyers love to talk about trials themselves, sudden inspiration and spontaneous wit at trial are almost never the keys to victory. It is in the weeks and months of plodding, grinding trial preparation that trials are won or lost. That is what this article is about.

Preparing a case for trial requires a lawyer to consider everything from big-picture strategy to mundane details. The lawyer must be able to mentally 'zoom out' and 'zoom in' on any issue—that is, to 'zoom out' and see where any given piece of evidence fits into the overall theory of the case, and 'zoom in' and know exactly how each piece of evidence will be introduced and presented. Because I handle wrongful death and personal injury cases, most of the lawyers I prepare cases with are plaintiffs' lawyers, and I have learned that most plaintiffs' lawyers love to 'zoom out'—they are forever talking about overall strategy or trial themes. They want to give big-picture opinions then leave the details to someone else. That is not enough. To win consistently, a lawyer must also master the details.

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## Hybrid Experts and Summary Reports:

### The Pitfalls of Rule 26(a)(2)(C)

By T. Brandon Waddell, *Caplan Cobb LLP*

Before 2010, the rules regarding the disclosures a party needed to make about an "expert" with whom it had a relationship that predated the litigation were all over the map. "Some courts . . . held that" experts not specially hired for litigation, like "treating physicians" or a business's skilled employees or consultants, were "always exempt from the Rule 26(a)(2)(B) requirement to prepare and sign reports . . ." *Brown v. Best Foods, A Div. of CPC Int'l, Inc.*, 169 F.R.D. 385, 387 (N.D. Ala. 1996). Others, as the Rules Advisory Committee observed, "require[d] reports under Rule 26(a)(2)(B) even from witnesses exempted from the report requirement" by the plain text of Rule 26. See Fed. R. Civ. P. 26, Advisory Committee's Note (2010 Amendments) (the "ACN"). That year, the rules were revised to set a bar for these so-called "percipient experts"-Rule 26(a)(2)(C). But that Rule has generated at least some uncertainty of its own (among parties, if not among courts) that, to date, no Court of Appeals has yet settled.

[Read entire article](#)

## April 15th Breakfast Summary

On Friday, April 15, Jonathan Hawkins, a partner with Krevolin & Horst, LLC, was the guest speaker for our monthly breakfast meeting. Mr. Hawkins discussed negotiation strategies, as well as pitfalls, through a series of popular movie and television clips. The presentation included tips on offers and counteroffers from Vincent LaGuardia Gambini ("My Cousin Vinny"), a demonstration of the importance of having full knowledge of the facts from "Argo," and many others. The program was both highly entertaining and informative.

## May 13th Breakfast Summary

For the Litigation Section's final breakfast meeting of the 2015-2016 Bar year, we were joined by State Representatives Stacey Evans and Wendell Willard, who discussed the most recent session of the Georgia General Assembly. Among the pieces of significant legislation passed were a re-write of Georgia garnishment law, a substantial revision to

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the state's anti-SLAPP (Strategic Lawsuit Against Public Participation) law, and the reorganization of Georgia's Judicial Qualifications Commission. The speakers also fielded questions from attendees and discussed bills likely to be addressed in 2017.

## May 10th Bench & Bar

On May 10, the Litigation Section held its annual Bench and Bar Reception at the offices of Nelson Mullins Riley & Scarborough LLP. This year's recipient of the Logan E. Bleckley Award for Judicial Excellence was the Honorable T. Jackson Bedford of the Superior Court of Fulton County, who was introduced by Terrence Croft and Robert Wellon. Judge Bedford has served on the Fulton County bench since 1996 and is retiring at the end of his current term.



Atlanta Bar Association | 229 Peachtree Street | Suite 400 | Atlanta | GA | 30303-1601