

Summary

Duty of counsel who participate in a Rule 37 conference: once counsel gives an undertaking to do something at a pre-trial conference it is the duty of that counsel to ensure that that undertaking is abided by. It is unacceptable for counsel to attend a pre-trial conference unprepared and to further give an undertaking which is not respected. To give such an undertaking and to not respect it thereafter demonstrates disregard for the provisions of Rule 37, is an unwarranted discourtesy to the opposing party and its legal representatives and is disrespectful of the Court that is called upon to hear and determine the case. Counsel should make every reasonable effort to assist the Court in identifying and narrowing the issues before Court. Furnishing a response to a Rule 37(4) list after promising to do so is an essential component of that duty. Attorneys, too bear the responsibility to ensure that a Rule 37(4) notice is responded to timeously.

Principles applicable to an application for postponement are trite. In the present case. the defendant did not bring its application for postponement timeously; did not at all explain the reason for its lack of preparedness, and has not shown that the prejudice it will suffer should the application for postponement be refused is greater than the prejudice the plaintiff would suffer should the application be granted. Nevertheless, the application was granted as refusing it would result in an unjustifiable waste of judicial resources. A punitive costs order would be appropriate in these circumstances.