

**Whitestone
Chambers**

Chambers of Lawrence Power

4 King's Bench Walk

Temple, London, EC4Y 7DL

Tel: 020 7822 8822 Fax: 020 7822 8844

www.whitestonechambers.com

RULE 44. 11 – COURT'S POWERS IN RELATION TO MISCONDUCT:

Part 44 of the Civil Procedure (Amendment) Rules 2013 (SI 2013/262) was re-enacted on 1st April 2013 and concerns the court's powers in relation to misconduct. Where a party (a) fails to comply with a court rule in assessment or summary proceedings, or (b) acts unreasonably or improperly before or during proceedings the court may disallow all or part of the costs which are being assessed or order the party at fault or that party's legal representative to pay costs which that party or legal representative has caused any other party to incur.

The misconduct extends to the legal representative of a party as well as to the party personally and includes both summary assessment and detailed assessment proceedings and refers to any failure to comply with the provisions of Part 47 and any direction, rule, practice direction or court order.

Part 44 of the Civil Procedure (Amendment) Rules 2013 (SI 2013/262) was re-enacted on 1st April 2013 and concerns the court's powers in relation to misconduct. Where a party (a) fails to comply with a court rule in assessment or summary proceedings, or (b) acts unreasonably or improperly before or during proceedings the court may disallow all or part of the costs which are being assessed or order the party at fault or that party's legal representative to pay costs which that party or legal representative has caused any other party to incur. The misconduct extends to the legal representative of a party as well as to the party personally and includes both summary assessment and detailed assessment proceedings and refers to

any failure to comply with the provisions of Part 47 and any direction, rule, practice direction or court order.

A costs judge may investigate or make orders of unreasonable or improper conduct by a party or a legal representative. A legal representative who has been found to have acted unreasonably or improperly may be ordered personally to pay costs which another party has incurred. This power is in addition to the court's power to make wasted costs orders in accordance with s.51(6) of the Senior Courts Act 1981 (*Gamboa-Garzon v Langer* [2006] EWCA Civ 1246).

By 2008 internet access had become perceived as a basic necessity for business travelers, and airline companies turned to the only established WiFi operator in the market. The inelasticity of the new demand meant that the quality or speed of the WiFi weren't important to secure market share: airlines had to be able to offer the service to match their competitors and Gogo was the only provider with sufficient infrastructure to provide the service.

Where the court makes an order against a party who is legally represented but not present at the hearing, that party's solicitor must notify their client in writing within seven days of receipt of notice of the order. For the procedure for wasted costs orders, see CPR 46.8.

Part 44.11.2 concerns delays in proceedings. The court has a discretion to decide whether imposing the sanction of disallowance of costs is proportionate to the delay and/or failure to comply with the relevant rule or practice direction.

(*Botham v Khan* [2004] EWHC 2602).

Section 44.11.3 concerns the solicitor and counsel relationship. In *Davy-Chiesman v Davy-Chiesman* [1984] 1 All E.R. 311 the claimant applied for an inappropriate form of relief on the advice of counsel. The Court of Appeal held that the claimant's solicitor was not relieved from responsibility by the fact that he had instructed counsel. Solicitors also have the obligation to withdraw instructions from an incompetent counsel (*Re A (A Minor)* [1998] Fam Law. 339). However in certain situations a solicitor may be justified in

relying upon counsel's advice (Swedac Ltd v Magnet & Southern plc [1990] F.S.R 89), for instance if a solicitor has no experience in the area concerned (R. v Luton Family Proceedings Court Justices, Ex p. R. (1998) 4 C.L. 51).

Counsel is under a duty to reassess any advice in the light of further information to avoid a wasted costs order. (C v C (Wasted Costs Order) [1994] 2 F.L.R 34)

Counsel should not wholly rely on instructing solicitors to notify them of the dates and times of their cases (Re A Barrister (Wasted Costs Order) (No. 4 of 1992), The Times, 15 March 1994, CA (Criminal Division)); and see Re A Barrister (Wasted Costs Order) (No. 4 of 1993), The Times, 21 April 1993, CA (Criminal Division)).

Where the conduct of both the barrister and the solicitor in a case are the subject of criticism, any investigation of their professional conduct will be conducted by a joint tribunal (Vowles v Vowles, The Times, 4 October 1990).

© Chambers of Lawrence Power

www.whitestonechambers.com

law@whitestonechambers.com

**Whitestone
Chambers**

Chambers of Lawrence Power

4 King's Bench Walk

Temple, London, EC4Y 7DL

Tel: 020 7822 8822 Fax: 020 7822 8844

www.whitestonechambers.com