

1 **Rule 37. ~~Discovery and disclosure motions~~ Statement of discovery issues; Sanctions; Failure**
2 **to admit, to attend deposition or to preserve evidence.**

3 **~~(a) Motion for order compelling disclosure or discovery.~~**

4 ~~(a)(1) A party may move to compel disclosure or discovery and for appropriate sanctions if another~~
5 ~~party:~~

6 ~~(a)(1)(A) fails to disclose, fails to respond to a discovery request, or makes an evasive or~~
7 ~~incomplete disclosure or response to a request for discovery;~~

8 ~~(a)(1)(B) fails to disclose, fails to respond to a discovery request, fails to supplement a~~
9 ~~disclosure or response or makes a supplemental disclosure or response without an adequate~~
10 ~~explanation of why the additional or correct information was not previously provided;~~

11 ~~(a)(1)(C) objects to a discovery request ;~~

12 ~~(a)(1)(D) impedes, delays, or frustrates the fair examination of a witness; or~~

13 ~~(a)(1)(E) otherwise fails to make full and complete disclosure or discovery.~~

14 ~~(a)(2) A motion may be made to the court in which the action is pending, or, on matters relating to~~
15 ~~a deposition or a document subpoena, to the court in the district where the deposition is being taken~~
16 ~~or where the subpoena was served. A motion for an order to a nonparty witness shall be made to the~~
17 ~~court in the district where the deposition is being taken or where the subpoena was served.~~

18 ~~(a)(3) The moving party must attach a copy of the request for discovery, the disclosure, or the~~
19 ~~response at issue. The moving party must also attach a certification that the moving party has in good~~
20 ~~faith conferred or attempted to confer with the other affected parties in an effort to secure the~~
21 ~~disclosure or discovery without court action and that the discovery being sought is proportional under~~
22 ~~Rule 26(b)(2).~~

23 **~~(b) Motion for protective order.~~**

24 ~~(b)(1) A party or the person from whom disclosure is required or discovery is sought may move for~~
25 ~~an order of protection. The moving party shall attach to the motion a copy of the request for discovery~~
26 ~~or the response at issue. The moving party shall also attach a certification that the moving party has~~
27 ~~in good faith conferred or attempted to confer with other affected parties to resolve the dispute without~~
28 ~~court action.~~

29 ~~(b)(2) If the motion raises issues of proportionality under Rule 26(b)(2), the party seeking the~~
30 ~~discovery has the burden of demonstrating that the information being sought is proportional.~~

31 **(a) Statement of discovery issues.**

32 (a)(1) A party or the person from whom discovery is sought may request that the judge enter an
33 order regarding any discovery issue, including:

34 (a)(1)(A) failure to disclose under Rule 26;

35 (a)(1)(B) extraordinary discovery under Rule 26;

36 (a)(1)(C) a subpoena under Rule 45;

37 (a)(1)(D) protection from discovery; or

38 (a)(1)(E) compelling discovery from a party who fails to make full and complete discovery.

39 **(a)(2) Statement of discovery issues length and content.** The statement of discovery issues
40 must be no more than 4 pages, not including permitted attachments, and must include in the following
41 order:

42 (a)(2)(A) the relief sought and the grounds for the relief sought stated succinctly and with
43 particularity;

44 (a)(2)(B) a certification that the requesting party has in good faith conferred or attempted to
45 confer with the other affected parties in person or by telephone in an effort to resolve the dispute
46 without court action;

47 (a)(2)(C) a statement regarding proportionality under Rule 26(b)(2); and

48 (a)(2)(D) if the statement requests extraordinary discovery, a statement certifying that the
49 party has reviewed and approved a discovery budget.

50 **(a)(3) Objection length and content.** No more than 7 days after the statement is filed, any other
51 party may file an objection to the statement of discovery issues. The objection must be no more than
52 4 pages, not including permitted attachments, and must address the issues raised in the statement.

53 **(a)(4) Permitted attachments.** The party filing the statement must attach to the statement only a
54 copy of the disclosure, request for discovery or the response at issue.

55 **(a)(5) Proposed order.** Each party must file a proposed order concurrently with its statement or
56 objection.

57 **(a)(6) Decision.** Upon filing of the objection or expiration of the time to do so, either party may
58 and the party filing the statement must file a Request to Submit for Decision under Rule 7(g). The
59 court will promptly:

60 (a)(6)(A) decide the issues on the pleadings and papers;

61 (a)(6)(B) conduct a hearing by telephone conference or other electronic communication; or

62 (a)(6)(C) order additional briefing and establish a briefing schedule.

63 **(e)-(a)(7) Orders.** The court may ~~make~~ enter orders regarding disclosure or discovery or to protect a
64 party or person from discovery being conducted in bad faith or from annoyance, embarrassment,
65 oppression, or undue burden or expense, or to achieve proportionality under Rule 26(b)(2), including one
66 or more of the following:

67 ~~(e)-(1)-(a)(7)(A)~~ (a)(7)(A) that the discovery not be had or that additional discovery be had;

68 ~~(e)-(2)-(a)(7)(B)~~ (a)(7)(B) that the discovery may be had only on specified terms and conditions,
69 including a designation of the time or place;

70 ~~(e)-(3)-(a)(7)(C)~~ (a)(7)(C) that the discovery may be had only by a method of discovery other than that
71 selected by the party seeking discovery;

72 ~~(e)-(4)-(a)(7)(D)~~ (a)(7)(D) that certain matters not be inquired into, or that the scope of the discovery be
73 limited to certain matters;

74 ~~(e)(5)-(a)(7)(E)~~ that discovery be conducted with no one present except persons designated
75 by the court;

76 ~~(e)(6)-(a)(7)(F)~~ that a deposition after being sealed be opened only by order of the court;

77 ~~(e)(7)-(a)(7)(G)~~ that a trade secret or other confidential information not be disclosed or be
78 disclosed only in a designated way;

79 ~~(e)(8)-(a)(7)(H)~~ that the parties simultaneously ~~file~~ deliver specified documents or information
80 enclosed in sealed envelopes to be opened as directed by the court;

81 ~~(e)(9)-(a)(7)(I)~~ that a question about a statement or opinion of fact or the application of law to
82 fact not be answered until after designated discovery has been completed or until a pretrial
83 conference or other later time; ~~or~~

84 ~~(e)(10)-(a)(7)(J)~~ that the costs, expenses and attorney fees of discovery be allocated among
85 the parties as justice requires; ~~or~~

86 ~~(e)(11) If a protective order terminates a deposition, it shall be resumed only upon the order of~~
87 ~~the court in which the action is pending.~~

88 ~~(d) Expenses and sanctions for motions. If the motion to compel or for a protective order is~~
89 ~~granted or denied, or if a party provides disclosure or discovery or withdraws a disclosure or~~
90 ~~discovery request after a motion is filed, the court may order the party, witness or attorney to pay~~
91 ~~(a)(7)(K) that a party pay the reasonable costs, expenses and attorney fees incurred on account~~
92 ~~of the motion statement of discovery issues if the relief requested is granted or denied, or if a~~
93 ~~party provides discovery or withdraws a discovery request after a statement of discovery issues is~~
94 ~~filed and if the court finds that the party, witness, or attorney did not act in good faith or asserted a~~
95 ~~position that was not substantially justified. A motion to compel or for a protective order does not~~
96 ~~suspend or toll the time to complete standard discovery.~~

97 **(a)(8) Request for sanctions prohibited.** A statement of discovery issues or an objection may
98 include a request for costs, expenses and attorney fees but not a request for sanctions.

99 **(a)(9) Statement of discovery issues does not toll discovery time.** A statement of discovery
100 issues does not suspend or toll the time to complete standard discovery.

101 **(e) Failure to comply with order(b) Motion for sanctions.**

102 ~~(e)(1) Sanctions by court in district where deposition is taken. Failure to follow an order of the court in~~
103 ~~the district in which the deposition is being taken or where the document subpoena was served is~~
104 ~~contempt of that court.~~

105 ~~(e)(2) Sanctions by court in which action is pending. Unless the court finds that the failure was~~
106 ~~substantially justified, the court, in which the action is pending upon motion, may impose appropriate~~
107 ~~sanctions for the failure to follow its orders, including the following:~~

108 ~~(e)(2)(A)-(b)(1)~~ deem the matter or any other designated facts to be established in accordance
109 with the claim or defense of the party obtaining the order;

110 ~~(e)(2)(B)-(b)(2)~~ prohibit the disobedient party from supporting or opposing designated claims or
 111 defenses or from introducing designated matters into evidence;

112 ~~(e)(2)(C)-(b)(3)~~ stay further proceedings until the order is obeyed;

113 ~~(e)(2)(D)-(b)(4)~~ dismiss all or part of the action, strike all or part of the pleadings, or render
 114 judgment by default on all or part of the action;

115 ~~(e)(2)(E)-(b)(5)~~ order the party or the attorney to pay the reasonable costs, expenses, including
 116 and attorney fees, caused by the failure;

117 ~~(e)(2)(F)-(b)(6)~~ treat the failure to obey an order, other than an order to submit to a physical or
 118 mental examination, as contempt of court; and

119 ~~(e)(2)(G)-(b)(7)~~ instruct the jury regarding an adverse inference.

120 **~~(f) Expenses-(c) Motion for costs, expenses and attorney fees on failure to admit.~~** If a party fails
 121 to admit the genuineness of ~~any a~~ document or the truth of ~~any a~~ matter as requested under Rule 36, and
 122 if the party requesting the admissions proves the genuineness of the document or the truth of the matter,
 123 the party requesting the admissions may ~~apply to the court~~ file a motion for an order requiring the other
 124 party to pay the reasonable costs, expenses and attorney fees incurred in making that proof, ~~including~~
 125 ~~reasonable attorney fees~~. The court ~~shall make~~ must enter the order unless it finds that:

126 ~~(f)(1)-(c)(1)~~ the request was held objectionable pursuant to Rule 36(a);

127 ~~(f)(2)-(c)(2)~~ the admission sought was of no substantial importance;

128 ~~(f)(3)-(c)(3)~~ there were reasonable grounds to believe that the party failing to admit might prevail
 129 on the matter;

130 ~~(f)(4)-(c)(4)~~ that the request ~~is~~ was not proportional under Rule 26(b)(2); or

131 ~~(f)(5)-(c)(5)~~ there were other good reasons for the failure to admit.

132 **~~(g) Failure-(d) Motion for sanctions for failure of party to attend at own deposition.~~** ~~The court on~~
 133 ~~motion may take any action authorized by paragraph (e)(2) if~~ If a party or an officer, director, or managing
 134 agent of a party or a person designated under Rule 30(b)(6) ~~or 31(a)~~ to testify on behalf of a party fails to
 135 appear before the officer taking the deposition, after ~~proper~~ service of the notice, any other party may file
 136 a motion for sanctions under paragraph (b). The failure to ~~act described in this paragraph~~ appear may not
 137 be excused on the ground that the discovery sought is objectionable unless the party failing to ~~act~~ appear
 138 has ~~applied for a protective order~~ filed a statement of discovery issues under paragraph ~~(b)~~ (a).

139 **~~(h) Failure to disclose.~~** ~~If a party fails to disclose a witness, document or other material, or to amend~~
 140 ~~a prior response to discovery as required by Rule 26(d), that party shall not be permitted to use the~~
 141 ~~witness, document or other material at any hearing unless the failure to disclose is harmless or the party~~
 142 ~~shows good cause for the failure to disclose. In addition to or in lieu of this sanction, the court on motion~~
 143 ~~may take any action authorized by paragraph (e)(2).~~

144 **~~(i)-(e) Failure to preserve evidence.~~** Nothing in this rule limits the inherent power of the court to take
 145 any action authorized by paragraph ~~(e)(2)~~ (b) if a party destroys, conceals, alters, tampers with or fails to
 146 preserve a document, tangible item, electronic data or other evidence in violation of a duty. Absent

147 exceptional circumstances, a court may not impose sanctions under these rules on a party for failing to
148 provide electronically stored information lost as a result of the routine, good-faith operation of an
149 electronic information system.

150 **Advisory Committee Notes**

151 [Add to existing notes]

152 2015 Amendments.

153 Paragraph (a) adopts the expedited procedures for statements of discovery issues formerly found in
154 Rule 4-502 of the Code of Judicial Administration. Statements of discovery issues replace discovery
155 motions, and paragraph (a) governs unless the judge orders otherwise.

156 Former paragraph (a)(2), which directed a motion for a discovery order against a nonparty witness to
157 be filed in the judicial district where the subpoena was served or deposition was to be taken, has been
158 deleted. A statement of discovery issues related to a nonparty must be filed in the court in which the
159 action is pending.

160 Former paragraph (h), which prohibited a party from using at a hearing information not disclosed as
161 required, was deleted because the effect of non-disclosure is adequately governed by Rule 26(d). See
162 also *The Townhomes At Pointe Meadows Owners Association v. Pointe Meadows Townhomes, LLC*,
163 2014 UT App 52 ¶14. The process for resolving disclosure issues is included in paragraph (a).

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