

1 **Rule 37. Discovery and disclosure motions; Sanctions.**

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

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

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

7 (a)(1)(B) fails to disclose, fails to respond to a discovery request, fails to  
8 supplement a disclosure or response or makes a supplemental disclosure or  
9 response without an adequate explanation of why the additional or correct  
10 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  
15 matters relating to a deposition or a document subpoena, to the court in the district  
16 where the deposition is being taken or where the subpoena was served. A motion for  
17 an order to a nonparty witness shall be made to the court in the district where the  
18 deposition is being taken or where the subpoena was served.

19 (a)(3) The moving party must attach a copy of the request for discovery, the  
20 disclosure, or the response at issue. The moving party must also attach a  
21 certification that the moving party has in good faith conferred or attempted to confer  
22 with the other affected parties in an effort to secure the disclosure or discovery  
23 without court action and that the discovery being sought is proportional under Rule  
24 26(b)(2).

25 (b) **Motion for protective order.**

26 (b)(1) A party or the person from whom disclosure is required or discovery is  
27 sought may move for an order of protection ~~from discovery~~. The moving party shall  
28 attach to the motion a copy of the request for discovery or the response at issue.  
29 The moving party shall also attach a certification that the moving party has in good

30 faith conferred or attempted to confer with other affected parties to resolve the  
31 dispute without court action.

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

35 (c) **Orders.** The court may make ~~any orders to require regarding~~ disclosure or  
36 discovery or to protect a party or person from discovery being conducted in bad faith or  
37 from annoyance, embarrassment, oppression, or undue burden or expense, or to  
38 achieve proportionality under Rule 26(b)(2), including one or more of the following:

39 (c)(1) that the discovery not be had;

40 (c)(2) that the discovery may be had only on specified terms and conditions,  
41 including a designation of the time or place;

42 (c)(3) that the discovery may be had only by a method of discovery other than  
43 that selected by the party seeking discovery;

44 (c)(4) that certain matters not be inquired into, or that the scope of the discovery  
45 be limited to certain matters;

46 (c)(5) that discovery be conducted with no one present except persons  
47 designated by the court;

48 (c)(6) that a deposition after being sealed be opened only by order of the court;

49 (c)(7) that a trade secret or other confidential ~~research, development, or~~  
50 ~~commercial~~ information not be disclosed or be disclosed only in a designated way;

51 (c)(8) that the parties simultaneously file specified documents or information  
52 enclosed in sealed envelopes to be opened as directed by the court;

53 (c)(9) that a question about a statement or opinion of fact or the application of law  
54 to fact not be answered until after designated discovery has been completed or until  
55 a pretrial conference or other later time; or

56 (c)(10) that the costs, expenses and attorney fees of discovery be allocated  
57 among the parties as justice requires.

58 (c)(11) If a protective order terminates a deposition, it shall be resumed only upon  
59 the order of the court in which the action is pending.

60 (d) **Expenses and sanctions for motions.** If the motion to compel or for a  
61 protective order is granted or denied, or if a party provides disclosure or discovery or  
62 withdraws a disclosure or discovery request after a motion is filed, the court may order  
63 the party, witness or attorney to pay the reasonable expenses and attorney fees  
64 incurred on account of the motion if the court finds that the party, witness, or attorney  
65 did not act in good faith or asserted a position that was not substantially justified. A  
66 motion to compel or for a protective order does not suspend or toll the time to complete  
67 standard discovery.

68 (e) **Failure to comply with order.**

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

72 (e)(2) Sanctions by court in which action is pending. Unless the court finds that  
73 the failure was substantially justified, the court in which the action is pending may  
74 impose appropriate sanctions for the failure to follow its orders, including the  
75 following:

76 (e)(2)(A) deem the matter or any other designated facts to be established in  
77 accordance with the claim or defense of the party obtaining the order;

78 (e)(2)(B) prohibit the disobedient party from supporting or opposing  
79 designated claims or defenses or from introducing designated matters into  
80 evidence;

81 (e)(2)(C) stay further proceedings until the order is obeyed;

82 (e)(2)(D) dismiss all or part of the action, strike all or part of the pleadings, or  
83 render judgment by default on all or part of the action;

84 (e)(2)(E) order the party or the attorney to pay the reasonable expenses,  
85 including attorney fees, caused by the failure;

86 (e)(2)(F) treat the failure to obey an order, other than an order to submit to a  
87 physical or mental examination, as contempt of court; and

88 (e)(2)(G) instruct the jury regarding an adverse inference.

89 (f) **Expenses on failure to admit.** If a party fails to admit the genuineness of any  
90 document or the truth of any matter as requested under Rule 36, and if the party  
91 requesting the admissions proves the genuineness of the document or the truth of the  
92 matter, the party requesting the admissions may apply to the court for an order requiring  
93 the other party to pay the reasonable expenses incurred in making that proof, including  
94 reasonable attorney fees. The court shall make the order unless it finds that:

95 (f)(1) the request was held objectionable pursuant to Rule 36(a);

96 (f)(2) the admission sought was of no substantial importance;

97 (f)(3) there were reasonable grounds to believe that the party failing to admit  
98 might prevail on the matter;

99 (f)(4) that the request is not proportional under Rule 26(b)(2); or

100 (f)(5) there were other good reasons for the failure to admit.

101 (g) **Failure of party to attend at own deposition.** The court on motion may take  
102 any action authorized by paragraph (e)(2) if a party or an officer, director, or managing  
103 agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf  
104 of a party fails to appear before the officer taking the deposition, after proper service of  
105 the notice. The failure to act described in this paragraph may not be excused on the  
106 ground that the discovery sought is objectionable unless the party failing to act has  
107 applied for a protective order under paragraph (b).

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

114 (i) **Failure to preserve evidence.** Nothing in this rule limits the inherent power of the  
115 court to take any action authorized by paragraph (e)(2) if a party destroys, conceals,  
116 alters, tampers with or fails to preserve a document, tangible item, electronic data or  
117 other evidence in violation of a duty. Absent exceptional circumstances, a court may not  
118 impose sanctions under these rules on a party for failing to provide electronically stored

119 information lost as a result of the routine, good-faith operation of an electronic

120 information system.

121 [Advisory Committee Notes](#)

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