

## Discovery Remedies

<b>Rule 37(a): Motion for an Order Compelling Disclosure or Discovery</b>			
	<b>Rule</b>	<b>Remedy</b>	<b>Fees?</b>
General Motion to Compel	37(a)(1)	Order compelling disclosure or discovery	Yes, loser (counsel, client, or both) pays unless substantially justified or unjust
Specific Motions to Compel	37(a)(3)		
Failure to make or supplement initial disclosure*	37(a)(3)(A) 37(c)(1)	Order compelling disclosure and for appropriate sanctions — 37(a)(3)(A)  Exclusion of non-disclosed evidence unless substantially justified or harmless — 37(c)(1)  Attorney’s fees — 37(c)(1)(A)  Inform jury of failure to disclose — 37(c)(1)(B)  Other appropriate sanctions, including (i)-(vi) — 37(c)(1)(C)	Yes  37(a)(5) – loser pays unless substantially justified or unjust
Failure to answer a depo question*	37(a)(3)(B)(i)	Order compelling an answer, production, or inspection	
Failure to answer an interrogatory*	37(a)(3)(B)(iii)		
Failure to produce documents or permit inspection*	37(a)(3)(B)(iv)		
Failure to designate a 30(b)(6) witness	37(a)(3)(B)(ii)	Order compelling a designation	

\*Evasive or incomplete disclosure, answer, or response “must be treated as a failure to disclose, answer, or respond.” — 37(a)(4)

<b>Rule 37(b): Failure to Comply with Court Order</b>			
	<b>Rule</b>	<b>Remedy</b>	<b>Fees?</b>
Failure to comply with order to answer deposition question	37(b)(1)	Contempt of Court in district where depo taken	Presumably yes as part of a contempt sanction
Failure to obey an order compelling discovery	37(b)(2)(A)	Issue “further just orders” including (i) – (vii) and fees	Yes. Against party, attorney, or both — 37(b)(2)(C)
Failure to produce person for Rule 35 examination	37(b)(2)(B)	(i)-(vi) unless party shows it cannot produce the person.	

<b>Rule 37(c) Failure to Disclose, Supplement, or Admit</b>			
	<b>Rule</b>	<b>Remedy</b>	<b>Fees?</b>
Failure to supplement discovery	37(c)(1)	Exclusion of non-disclosed evidence unless substantially justified or harmless.  Attorney’s fees — 37(c)(1)(A)  Inform jury of failure to disclose — 37(c)(1)(B)  Other appropriate sanctions, including (i)-(vi) — 37(c)(1)(C)	Yes
Failure to admit	37(c)(2)	Expenses (including fees), unless unless request was objectionable, fact was “of no substantial importance,” or other good reason for failure to admit.	Yes

**Rule 37(d): Failure To Attend Own Deposition, Serve Answers To Interrogatories, Or Respond To Request For Inspection**

	<b>Rule</b>	<b>Remedy</b>	<b>Fees?</b>
Failure to attend own deposition, answer interrogatory, or respond to RFP	37(d)	Issue “further just orders” including (i) – (vii) and fees  No defense that discovery was objectionable, unless file motion for protective order — 37(d)(2)	Yes, 37(d)(3). Against party and/or lawyer unless substantially justified or unjust

**Rule 37(e): Failure to Preserve ESI**

	<b>Rule</b>	<b>Remedy</b>	<b>Fees?</b>
Failure to Preserve ESI	37(e)	If no intent to deprive but prejudice, “measures no greater than necessary to cure the prejudice”  If intent to deprive, adverse presumption, adverse jury instruction or adverse termination of proceedings	Not explicitly

**Rule 37(f): Failure to Participate in Framing a Discovery Plan**

	<b>Rule</b>	<b>Remedy</b>	<b>Fees?</b>
Failure to Participate in Framing Rule 26(f) Discovery Plan	37(f)	Fees and expenses	Yes

<b>Rule 26(c): Protective Orders</b>			
	<b>Rule</b>	<b>Remedy</b>	<b>Fees?</b>
Protective Order	26(c)	If annoyance, embarrassment, oppression, or undue burden or expense:  26(c)(1)(A)-(H)	Yes. Loser pays unless substantially justified or unjust. 26(c)(3) expressly incorporates 37(a)(5)

<b>Rule 26(g): Signing Documents and Discovery Requests, Responses, and Objections</b>			
	<b>Rule</b>	<b>Remedy</b>	<b>Fees?</b>
Failure to Sign	26(g)(2)	Other parties have no duty to act and court can strike disclosure, request, response, or objection unless promptly cured	No
Improper Certification	26(g)(3)	“appropriate sanctions on the signer, the party, or both” unless substantial justification	Yes

<b>Rule 30(d): Deposition Behavior</b>			
	<b>Rule</b>	<b>Remedy</b>	<b>Fees?</b>
Impeding, delaying, or frustrating fair examination of deponent	30(d)(2)	“appropriate sanction — including the reasonable expenses and attorney’s fees incurred by any party.”	Yes
Conducting deposition in bad faith or to unreasonably annoy, embarrass, or oppress	30(d)(3)(C)	Order that the deposition be terminated, limit its scope and manner through Rule 26(c) protective order.	Yes, if not substantially justified or unjust (expressly incorporates 37(a)(5))

Motion to compel better answers to RFP or Interrogatory where there is no objection. If no legal objection to overrule, what are you asking the court to do? Is it evasive or non-responsive?

“They didn’t give us everything” or “They didn’t look hard enough” – best framed as a challenge to the sufficiency of their Rule 26(g) certification. Fed. R. Civ. P. 26(g)(3)

Where do objections fit in? 37(a)(1) general motion to compel?