

RULE 37 FAILURE TO MAKE DISCLOSURES OR TO COOPERATE IN DISCOVERY; SANCTIONS

Rule 37 (a) Motion for an Order Compelling Disclosure or Discovery.



Rule 37 (a)(1) In General.
On



a party may move for an order



The motion must include a



that the movant has in good faith conferred



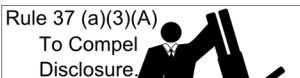
or attempted to confer



with the person or party failing to make disclosure or discovery



in an effort to obtain it without court action



Rule 37 (a)(2) Appropriate Court.



A motion for an order to a party



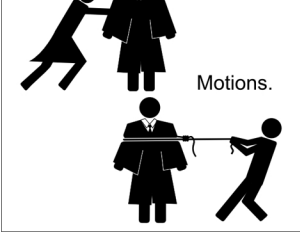
must be made in the court where the action is pending

A motion for an order to a party



must be made in the court where the discovery is or will be taken.

Rule 37 (a)(3) Specific Motions.



Rule 37 (a)(3)(A) To Compel Disclosure.



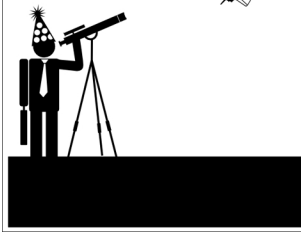
any other party may move to compel disclosure and for appropriate sanctions.



Rule 37 (a)(3)(B) To Compel a Discovery Response.



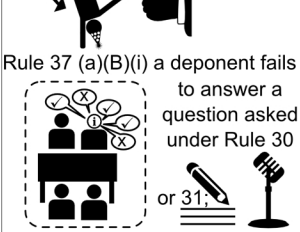
(ii) the party seeking



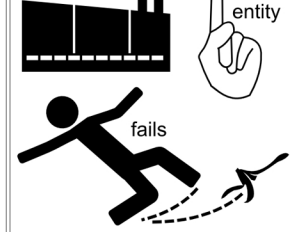
may move for an order compelling an answer, production, or inspection.



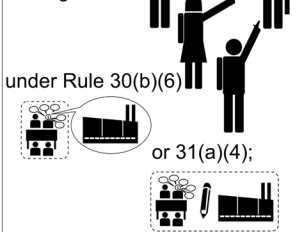
This motion may be made if:



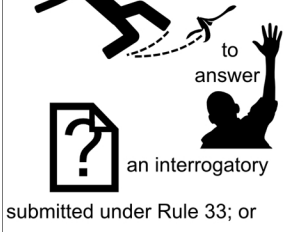
Rule 37 (a)(B)(i) a corporation or other entity fails



to make a designation under Rule 30(b)(6) or 31(a)(4);



Rule 37 (a)(3)(B)(iii) a party fails to answer an interrogatory submitted under Rule 33; or



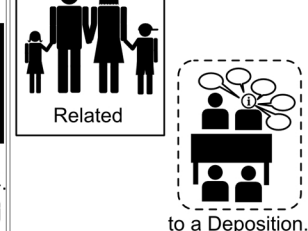
Rule 37 (a)(3)(B)(iv) a party fails to respond that inspection will be permitted—



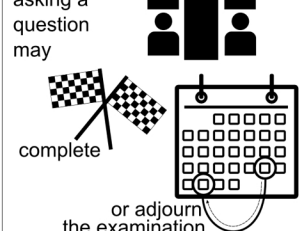
or fails to permit inspection as requested under Rule 34.



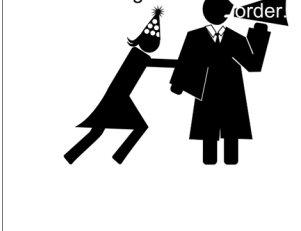
Rule 37 (a)(3)(C) Related



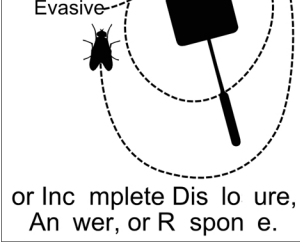
When taking an oral deposition, the party asking a question may complete or adjourn the examination



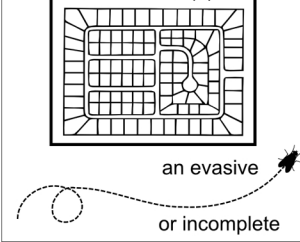
before moving for an order.



Rule 37 (a)(4) Evasive



For purposes of this subdivision (a), an evasive or incomplete



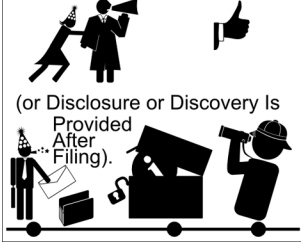
disclosure, answer, or response must be treated as a failure to disclose, answer, or respond.



Rule 37 (a)(5) Payment of Expenses; Protective Orders.



Rule 37 (a)(5)(A) If the Motion Is Granted (or Disclosure or Discovery Is Provided After Filing).



If the motion is granted—
or if the disclosure or requested discovery is provided after the motion was filed—

the court **must,**
after giving an opportunity to be heard,
require

the party whose conduct necessitated the motion,
or
the party or attorney advising that conduct,

or both
to pay

the movant's reasonable expenses incurred in making the motion, including attorney's fees.
But the court must not order this payment if:

Rule 37 (a)(5)(A)(i) the movant filed the motion before attempting, in good faith, to obtain the disclosure or discovery without court action;

Rule 37 (a)(5)(A)(ii) the opposing party's nondisclosure, or response, objection was substantially justified;

Rule 37 (a)(5)(A)(iii) other circumstances make an award of expenses unjust.

Rule 37 (a)(5)(B) If the Motion Is Denied, the court may issue any protective order authorized under Rule 26(c)

and **must,** after giving an opportunity to be heard, **require** the movant,

the attorney filing the motion, or both, to pay the party or deponent

who opposed the motion, its reasonable expenses incurred in opposing the motion, including attorney's fees

But the court must not order this payment if the motion was **substantially justified;** or other circumstances make an award of expenses unjust.

Rule 37 (a)(5)(C) If the Motion Is Granted in Part and Denied in Part.

If the motion is granted in part and denied in part, the court may issue any protective order authorized under Rule 26(c)

and may, after giving an opportunity to be heard, apportion the reasonable expenses for the motion.

Rule 37 (b) Failure to Comply with a Court Order
Rule 37 (b)(1) Sanctions in the District Where the Deposition Is Taken.

If the court where the discovery is taken orders a deponent to be sworn

or to answer a question and the deponent fails to obey, the failure may be treated as contempt of court.

Rule 37 (b)(2) Sanctions in the District Where the

Rule 37 (b)(2)(A) For Not Obeying a Discovery Order.

If a party or a party's officer, director, or managing agent

—or a witness designated under Rule 30(b)(6) or 31(a)(4)—

fails to obey an order to provide or permit discovery.

including an order under Rule 26(f), 35, or 37(a).

the court where the action is pending may issue further just orders. They may include the following:

Rule 37 (b)(2)(A)(i) directing that the matters embraced in the order or other designated facts

be taken as established for purposes of the action as the prevailing party claims;

Rule 37 (b)(2)(A)(ii) prohibiting the disobedient party from supporting or opposing

designated claims

or defenses,

or from introducing designated matters in evidence;

Rule 37 (b)(2)(A)(iii) striking pleadings in

whole or in part;

Rule 37 (b)(2)(A)(iv) staying further proceedings

until the order is obeyed;

Rule 37 (b)(2)(A)(v) dismissing the action or proceeding

in whole or in part;

Rule 37 (b)(2)(A)(vi) rendering a default judgment against the disobedient party;

or

Rule 37 (b)(2)(A)(vii) treating as contempt of court the failure to obey any order

except an order to submit to a physical or mental examination.

Rule 37 (b)(2)(B) For Not Producing a Person for Examination.

If a party fails to comply with an order

under Rule 35(a)

requiring it to produce another person for examination,

the court may issue any of the orders listed in Rule 37 (b)(2)(A)(i)–(vi),

unless the disobedient party shows that it cannot produce the other person.

Rule 37 (b)(2)(C) Payment of Expenses.

Instead of

or in addition to

the orders above,

the court must order

the disobedient party,

the attorney advising that party,

or both

to pay

reasonable expenses, including attorney's fees,

caused by the failure,

unless the failure was substantially justified;

or other circumstances make an award of expenses unjust.

Rule 37 (c) Failure to Disclose, to Supplement an Earlier Response, or to Admit.

Rule 37 (c)(1) Failure to Disclose or Supplement.

If a party fails to provide information or identify a witness as required by Rule 26 (a) or (e),

the party is not allowed to use that information

or witness to supply evidence on a motion, at a hearing, or at a trial,

unless the failure was substantially justified;

or is harmless.

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In addition to or instead of this sanction,

the court, on motion

and after giving an opportunity to be heard:

Rule 37 (c)(1)(A) may order payment

of the reasonable expenses,

including attorney's fees, caused by the failure;

Rule 37 (c)(1)(B) may inform the jury of the party's failure;

and

Rule 37 (c)(1)(C) may impose other appropriate sanctions, including any of the orders listed in Rule 37(b)(2)(A)(i)–(vi).