

SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL RULES (CR)
CR 37 - FAILURE TO MAKE DISCOVERY: SANCTIONS

1 **(a) Motion for Order Compelling Discovery.** A party, upon reasonable notice to other parties
2 and all persons affected thereby, and upon a showing of compliance with rule 26(i), may apply to
3 the court in the county where the deposition was taken, or in the county where the action is
4 pending, for an order compelling discovery as follows:

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6 (1) *Appropriate Court.* An application for an order to a party may be made to the court in which
7 the action is pending, or on matters relating to a deposition, to the court in the county where the
8 deposition is being taken. An application for an order to a deponent who is not a party shall be
9 made to the court in the county where the deposition is being taken.

10 (2) *Motion.* If a deponent fails to answer a question propounded or submitted under rules 30 or
11 31, or a corporation or other entity fails to make a designation under rule 30(b)(6) or 31(a), or a
12 party fails to answer an interrogatory submitted under rule 33, or if a party, in response to a
13 request for inspection submitted under rule 34, fails to respond that inspection will be permitted
14 as requested or fails to permit inspection as requested, any party may move for an order
15 compelling an answer or a designation, or an order compelling inspection in accordance with the
16 request. When taking a deposition on oral examination, the proponent of the question may
17 complete or adjourn the examination before the proponent applies for an order.

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19 If the court denies the motion in whole or in part, it may make such protective order as it would
20 have been empowered to make on a motion made pursuant to rule 26(c).

21 (3) *Evasive or Incomplete Answer.* For purposes of this section an evasive or incomplete answer
22 is to be treated as a failure to answer.

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24 (4) *Award of Expenses of Motion.* If the motion is granted, the court shall, after opportunity for
25 hearing, require the party or deponent whose conduct necessitated the motion or the party or
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1 attorney advising such conduct or both of them to pay to the moving party the reasonable
2 expenses incurred in obtaining the order, including attorney fees, unless the court finds that the
3 opposition to the motion was substantially justified or that other circumstances make an award of
4 expenses unjust.

5 If the motion is denied, the court shall, after opportunity for hearing, require the moving party or
6 the attorney advising the motion or both of them to pay to the party or deponent who opposed the
7 motion the reasonable expenses incurred in opposing the motion, including attorney fees, unless
8 the court finds that the making of the motion was substantially justified or that other
9 circumstances make an award of expenses unjust.
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11 If the motion is granted in part and denied in part, the court may apportion the reasonable
12 expenses incurred in relation to the motion among the parties and persons in a just manner.

13 **(b) Failure to Comply With Order.**

14 (1) *Sanctions by Court in County Where Deposition Is Taken.* If a deponent fails to be sworn or
15 to answer a question after being directed to do so by the court in the county in which the
16 deposition is being taken, the failure may be considered a contempt of that court.
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18 (2) *Sanctions by Court in Which Action Is Pending.* If a party or an officer, director, or managing
19 agent of a party or a person designated under rule 30(b)(6) or 31(a) to testify on behalf of a party
20 fails to obey an order to provide or permit discovery, including an order made under section (a)
21 of this rule or rule 35, or if a party fails to obey an order entered under rule 26(f), the court in
22 which the action is pending may make such orders in regard to the failure as are just, and among
23 others the following:
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1 (A) An order that the matters regarding which the order was made or any other designated facts
2 shall be taken to be established for the purposes of the action in accordance with the claim of the
3 party obtaining the order;

4 (B) An order refusing to allow the disobedient party to support or oppose designated claims or
5 defenses, or prohibiting the disobedient party from introducing designated matters in evidence;

6 (C) An order striking out pleadings or parts thereof, or staying further proceedings until the order
7 is obeyed, or dismissing the action or proceedings or any part thereof, or rendering a judgment
8 by default against the disobedient party;

9 (D) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt
10 of court the failure to obey any orders except an order to submit to physical or mental
11 examination;

12 (E) Where a party has failed to comply with an order under rule 35(a) requiring the party to
13 produce another for examination such orders as are listed in sections (A), (B), and (C) of this
14 subsection, unless the party failing to comply shows that the party is unable to produce such
15 person for examination.
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17 In lieu of any of the foregoing orders or in addition thereto, the court shall require the party
18 failing to obey the order or the attorney advising him or her or both to pay the reasonable
19 expenses, including attorney fees, caused by the failure, unless the court finds that the failure was
20 substantially justified or that other circumstances make an award of expenses unjust.
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22 **(c) Expenses on Failure to Admit.** If a party fails to admit the genuineness of any document or
23 the truth of any matter as requested under rule 36, and if the party requesting the admissions
24 thereafter proves the genuineness of the document or the truth of the matter, the party may apply
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1 to the court for an order requiring the other party to pay the requesting party the reasonable
2 expenses incurred in making that proof, including reasonable attorney fees. The court shall make
3 the order unless it finds that (1) the request was held objectionable pursuant to rule 36(a), or (2)
4 the admission sought was of no substantial importance, or (3) the party failing to admit had
5 reasonable ground to believe the fact was not true or the document was not genuine, or (4) there
6 was other good reason for the failure to admit.
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8 **(d) Failure of Party to Attend at Own Deposition or Serve Answers to Interrogatories or**
9 **Respond to Request for Production or Inspection.** If a party or an officer, director, or
10 managing agent of a party or a person designated under rule 30(b)(6) or 31(a) to testify on behalf
11 of a party fails (1) to appear before the officer who is to take his or her deposition, after being
12 served with a proper notice, or (2) to serve answers or objections to interrogatories submitted
13 under rule 33, after proper service of the interrogatories, or (3) to serve a written response to a
14 request for production of documents or inspection submitted under rule 34, after proper service
15 of the request, the court in which the action is pending on motion may make such orders in
16 regard to the failure as are just, and among others it may take any action authorized under
17 sections (A), (B), and (C) of subsection (b)(2) of this rule. In lieu of any order or in addition
18 thereto, the court shall require the party failing to act or the attorney advising the party or both to
19 pay the reasonable expenses, including attorney fees, caused by the failure, unless the court finds
20 that the failure was substantially justified or that other circumstances make an award of expenses
21 unjust.
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23 The failure to act described in this subsection may not be excused on the ground that the
24 discovery sought is objectionable unless the party failing to act has applied for a protective order
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1 as provided by rule 26(c). For purposes of this section, an evasive or misleading answer is to be
2 treated as a failure to answer.

3 **(e) Failure to Participate in the Framing of a Discovery Plan.** If a party or a party's attorney
4 fails to participate in good faith in the framing of a discovery plan by agreement as is required by
5 rule 26(f), the court may, after opportunity for hearing, require such party or such party's attorney
6 to pay to any other party the reasonable expenses, including attorney fees, caused by the failure.
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8 **(f) Failure to Reasonably Cooperate.** If a party or a party's attorney fails to reasonably
9 cooperate as required in CR 1 or CR 26(a) regarding any discovery matter, the court may, after
10 opportunity for hearing, require the party or the party's attorney to pay the other party's
11 reasonable expenses, including attorney fees, caused by the failure.
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