

CHART OF CIVIL DISCOVERY SANCTIONS UNDER RULE 37

Ann M. Anderson, UNC School of Government (January 2012)

BASIS OF MOTION FOR SANCTIONS <sup>1</sup>	SANCTION(S) AVAILABLE <sup>2</sup>	ATTORNEY FEES, EXPENSES
<p><b>Rule 37(a)(2), (3)</b></p> <p>Failure to:</p> <ul style="list-style-type: none"> <li>• Answer a question posed at a deposition or propounded in writing. Rules 30, 31.</li> <li>• Designate a person to be deposed on behalf of corporate party. Rule 30(b)(6).</li> <li>• Answer an interrogatory or serve a candid/complete answer. Rule 33.</li> <li>• State in response to request for inspection/production that inspection will be permitted or failing to produce or allow inspection. Rule 34.</li> </ul>	<p><b>Rule 37(a)</b></p> <p>Court may make order compelling failing party to properly respond.</p> <p>(Notes:</p> <ul style="list-style-type: none"> <li>• <i>Party moving to compel must include certification that it has in good faith attempted to confer with the non-movant to obtain the materials before resorting to court action.</i></li> <li>• <i>If party fails to comply with this order compelling discovery, sanctions are available under Rule 37(b)(2). See section immediately below.</i>)</li> </ul>	<p><b>Rule 37(a)(4)</b></p> <ul style="list-style-type: none"> <li>• If motion granted, court <b>shall</b> order non-complying party to pay reasonable expenses and attorney fees <i>incurred in obtaining order</i> <b>unless</b> court finds the failure was (a) substantially justified; or (b) that other circumstances make award unjust.</li> <li>• If motion denied, court shall order movant to pay expenses and attorney fees <i>incurred in opposing order</i> <b>unless</b> court finds the failure was (a) substantially justified; or (b) that other circumstances make award unjust.</li> <li>• If motion denied in part and granted in part, court may apportion fees/expenses.</li> </ul>
<p><b>Rule 37(b)(2)</b></p> <p>Failure to comply with a prior discovery order:</p> <ul style="list-style-type: none"> <li>• <b>Order compelling discovery response under Rule 37(a).</b> (See section immediately above.)</li> <li>• <b>Order entered pursuant to Rule 37(d).</b> (See section immediately below.)</li> <li>• Order entered pursuant to Rule 37(b)(1) that deponent be sworn or</li> </ul>	<p><b>Rule 37(b)(2)</b></p> <p>Court may make:</p> <ul style="list-style-type: none"> <li>• “Such orders in regard to the failure as are just”;</li> <li>• Order that designated facts be taken to be established;</li> <li>• Order prohibiting party from introducing designated matter into evidence;</li> <li>• Order: <ul style="list-style-type: none"> <li>• striking out all or part of pleadings;</li> </ul> </li> </ul>	<p><b>Rule 37(b)(2)</b></p> <p><u>Yes.</u> If motion granted, court <b>shall</b> require party failing to comply to pay movant’s reasonable expenses, including attorney fees <i>caused by the failure</i> <b>unless</b> court finds the failure was (a) substantially justified; or (b) that other circumstances make award unjust.</p> <p>Court may award these expenses and fees in lieu of or in addition to Rule 37(b)(2) sanctions.</p>

<sup>1</sup> If the motion is based on an objection to production of electronically stored information from sources the objecting party identified as not reasonably accessible due to undue burden or cost, the objecting party has the burden of showing the basis for the objection exists. Rule 37(a)(2).

<sup>2</sup> Absent exceptional circumstances, a court may not impose sanctions under these rules on a party for failing to provide electronically stored information lost as a result of routine, good-faith operation of an electronic information system. Rule 37(b1).

BASIS OF MOTION FOR SANCTIONS <sup>1</sup>	SANCTION(S) AVAILABLE <sup>2</sup>	ATTORNEY FEES, EXPENSES
<p>answer a question.</p> <ul style="list-style-type: none"> <li>• Order for physical or mental examination pursuant to Rule 35.</li> <li>• Order following discovery conference under Rule 26(f).</li> </ul>	<ul style="list-style-type: none"> <li>• staying further proceedings until the order is obeyed;</li> <li>• dismissing all or part of the action; or</li> <li>• rendering default judgment</li> <li>• Contempt order (except for Rule 35(a) violation)</li> </ul>	<p>(No provision for award to non-movant if motion denied.)</p>
<p><b>Rule 37(e)</b></p> <p>Failure to:</p> <ul style="list-style-type: none"> <li>• Appear at deposition. Rules 30, 31.</li> <li>• Serve answers to interrogatories. Rule 33.</li> <li>• Serve responses to request for inspection/production of documents. Rule 34.</li> </ul>	<p><b>Rule 37(b)(2), (e)</b></p> <p>Court may:</p> <ul style="list-style-type: none"> <li>• “Make such orders in regard to the failure as are just”;</li> <li>• Order that designated facts be taken to be established in the action;</li> <li>• Order prohibiting party from introducing designated matter into evidence;</li> <li>• Order striking out all or part of pleadings.</li> </ul>	<p><b>Rule 37(e)</b></p> <p><u>Yes</u>. If motion granted, court <b>shall</b> require the party failing to comply to pay reasonable expenses of movant, including attorney fees <i>caused by the failure</i> <b>unless</b> the court finds the failure was (a) substantially justified; or (b) that other circumstances make award unjust.</p> <p>Court may award these expenses and fees in lieu of or in addition to Rule 37(d) sanctions.</p> <p>(No provision for award to non-movant if motion denied.)</p>
<p><b>Rule 37(d)</b></p> <p>Failure to admit genuineness of document or truth of any matter requested under Rule 36 where requesting party later proves genuineness/truth.</p>	<p><b>Rule 37(d)</b></p> <p>Order of expenses/attorney fees →</p>	<p><b>Rule 37(d)</b></p> <p>Upon motion, court <b>shall</b> make order of expenses/attorney fees incurred in making the proof <b>unless</b> it finds (i) request was held objectionable pursuant to Rule 36(a), or (ii) admission sought was of no substantial importance, or (iii) party failing to admit had reasonable ground to believe it might prevail on the matter; or (iv) there was other good reason for failure to admit.</p> <p>(No provision for award to non-movant where motion denied.)</p>

BASIS OF MOTION FOR SANCTIONS <sup>1</sup>	SANCTION(S) AVAILABLE <sup>2</sup>	ATTORNEY FEES, EXPENSES
<p><b>Rule 37(g)</b></p> <p>Failure to participate in good faith in the framing of a discovery plan under Rule 26(f).</p>	<p><b>Rule 37(g)</b></p> <p>Order of expenses/attorney fees</p> <p style="text-align: center;">→</p>	<p><b>Rule 37(g)</b></p> <p>After opp'y for hearing, court <b>may</b> order party <i>or</i> its attorney to pay moving party's reasonable expenses and attorney fees <i>caused by the failure</i>.</p> <p>(No provision for award to non-movant where motion denied.)</p>

Note: Other sanction provisions can be found within Rule 26 and within the discovery rules governing each method of discovery (Rules 30 through 36). There is considerable overlap among these rules and Rule 37, but each rule should be consulted separately where a motion is being made pursuant to that Rule.