

1 **FAILURE TO MAKE DISCOVERY; SANCTIONS**

2 **RULE 46**

3 **A Motion for order compelling discovery.** A party, upon reasonable notice to other parties
4 and all persons affected thereby, may [*apply*] **move** for an order compelling discovery as follows:

5 **A(1) Appropriate court.**

6 **A(1)(a) Parties.** [*An application*] **A motion** for an order [*to*] **directed against** a party may be
7 made to the court in which the action is pending[,] and, on matters relating to a deponent's failure
8 to answer questions at a deposition, such [*an application*] **a motion** may also be made to a court of
9 competent jurisdiction in the political subdivision where the deponent is located.

10 **A(1)(b) Non-parties.** [*An application*] **A motion** for an order [*to*] **directed against** a
11 deponent who is not a party shall be made to a court of competent jurisdiction in the political
12 subdivision where the non-party deponent is located.

13 **A(2) Motion.** If a party fails to furnish a report under Rule 44 B or C, or if a deponent fails to
14 answer a question propounded or submitted under Rules 39 or 40, or if a corporation or other
15 entity fails to make a designation under Rule 39 C(6) or Rule 40 A, or if a party fails to respond to a
16 request for a copy of an insurance agreement or policy under Rule 36 B(2), or if a party in response
17 to a request for inspection submitted under Rule 43 fails to permit inspection as requested, the
18 discovering party may move for an order compelling discovery in accordance with the request. Any
19 motion made under this subsection shall set out at the beginning of the motion the items that the
20 moving party seeks to discover. When taking a deposition on oral examination, the proponent of
21 the question may complete or adjourn the examination before applying for an order.

22 If the court denies the motion in whole or in part, it may make [*such*] **any** protective order
23 [*as*] it would have been empowered to make on a motion made pursuant to Rule 36 C.

24 **A(3) Evasive or incomplete answer.** For purposes of this section, an evasive or incomplete
25 answer is to be treated as a failure to answer.

26 **A(4) Award of expenses of motion.** If the motion is granted, the court may, after **an**

1 opportunity for hearing, require the party or deponent whose conduct necessitated the motion or
2 the party or attorney advising such conduct, or both of them, to pay to the moving party the
3 reasonable expenses incurred in obtaining the order, including attorney's fees, unless the court
4 finds that the opposition to the motion was substantially justified or that other circumstances make
5 an award of expenses unjust.

6 If the motion is denied, the court may, after an opportunity for hearing, require the moving
7 party or the attorney advising the motion, or both of them, to pay to the party or deponent who
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9 fees, unless the court finds that the making of the motion was substantially justified or that other
10 circumstances make an award of expenses unjust.

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 **B(1) Sanctions by court in the county where the deponent is located.** If a deponent fails to
15 be sworn or to answer a question after being directed to do so by a circuit court judge in the county
16 in which the deponent is located, the failure may be considered a contempt of court.

17 **B(2) Sanctions by court in which action is pending.** If a party or an officer, director, or
18 managing agent or a person designated under Rule 39 C(6) or Rule 40 A to testify on behalf of a
19 party fails to obey an order to provide or permit discovery, including an order made under section
20 A of this rule or Rule 44, the court in which the action is pending may make [*such*] orders in regard
21 to the failure as are just, including among others, the following:

22 **B(2)(a) Establishment of facts.** An order that the matters regarding which the order was
23 made or any other designated facts shall be taken to be established for the purposes of the action
24 in accordance with the claim of the party obtaining the order.[:]

25 **B(2)(b) Designated matters.** An order refusing to allow the disobedient party to support or
26 oppose designated claims or defenses, or prohibiting the disobedient party from introducing

1 designated matters in evidence.[:]

2 B(2)(c) **Strike, stay, or dismissal.** An order striking out pleadings or parts thereof, or staying
3 further proceedings until the order is obeyed, or dismissing the action or any part thereof, or
4 rendering a judgment by default against the disobedient party.[:]

5 B(2)(d) **Contempt of court.** In lieu of or in addition to any of the [*foregoing orders or in*
6 *addition thereto*] **orders listed in paragraph (a), (b), or (c) of this subsection**, an order treating as a
7 contempt of court the failure to obey any order except an order to submit to a physical or mental
8 examination.

9 B(2)(e) **Inability to produce person.** [*Such orders*] **Orders** [*as are*] listed in paragraphs (a),
10 (b), and (c) of this subsection, [*where*] **when** a party has failed to comply with an order under Rule
11 44 A requiring the party to produce another for examination, unless the party failing to comply
12 shows inability to produce such person for examination.

13 B(3) **Payment of expenses.** In lieu of or in addition to any order listed in subsection (2) of
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17 party in response to a request for inspection submitted under Rule 43 fails to permit inspection as
18 requested, the discovering party may move for an order compelling discovery in accordance with
19 the request. Any motion made under this subsection shall set out at the beginning of the motion
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14 **B Failure to comply with order.**

15 B(1) **Sanctions by court in the county where the deponent is located.** If a deponent fails to
16 be sworn or to answer a question after being directed to do so by a circuit court judge in the county
17 in which the deponent is located, the failure may be considered a contempt of court.

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21 A of this rule or Rule 44, the court in which the action is pending may make [*such orders*] any order
22 in regard to the failure as [*are*] is just, including among others, the following:

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24 made or any other designated facts shall be taken to be established for the purposes of the action
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2 | designated matters in evidence.[:]

3 | B(2)(c) **Strike, stay, or dismissal.** An order striking out pleadings or parts thereof, or staying
4 | further proceedings until the order is obeyed, or dismissing the action or any part thereof, or
5 | rendering a judgment by default against the disobedient party.[:]

6 | B(2)(d) **Contempt of court.** In lieu of or in addition to any of the [*foregoing orders or in*
7 | *addition thereto*] **orders listed in paragraphs B(2)(a), B(2)(b), or B(2)(c) of this rule**, an order
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11 | **B(2)(a), B(2)(b), and B(2)(c)** of this [*subsection*] **rule**, [*where*] **when** a party has failed to comply with
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13 | failing to comply shows inability to produce such person for examination.

14 | B(3) **Payment of expenses.** In lieu of or in addition to any order listed in subsection **B(2)** of
15 | this [*section*] **rule**, [*or in addition thereto,*] the court shall require the party failing to obey the order
16 | or the attorney advising such party or both to pay the reasonable expenses, including [*attorney's*]
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18 | justified or that other circumstances make an award of expenses unjust.

19 | **C Expenses on failure to admit.** If a party fails to admit the genuineness of any document or
20 | the truth of any matter, as requested under Rule 45, and if the party requesting the [*admissions*]
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3 **D Failure of party to attend at own deposition or respond to request for inspection [*or to***
4 ***inform of question regarding the existence of coverage of liability insurance policy*]**. If a party or
5 an officer, director, or managing agent of a party or a person designated under Rule 39 C(6) or **Rule**
6 **40 A** to testify on behalf of a party fails [(1)] to appear before the officer who is to take the
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8 or serve objections to a request for production and inspection submitted under Rule 43, after
9 proper service of the request, the court in which the action is pending on motion may make such
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8 deposition of that party or person, after being served with a proper notice, or [(2)] to comply with
9 or serve objections to a request for production [*and*] **or** inspection submitted under Rule 43, after
10 proper service of the request, the court in which the action is pending on motion may make such
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13 make *[such orders]* **any order** in regard to the failure as *[are]* **is** just, *including among others it may*
14 *take]* **including, but not limited to,** any action authorized under *[subsection B(2)(a), (b), and (c)]*
15 **paragraphs B(2)(a), B(2)(b), and B(2)(c)** of this rule. In lieu of any order or in addition thereto, the
16 court shall require the party failing to act or the attorney advising *[such]* **that** party, or both, to pay
17 the reasonable expenses, including *[attorney's]* **attorney** fees, caused by the failure, unless the
18 court finds that the failure was substantially justified or that other circumstances make an award of
19 expenses unjust. The failure to act described in this section may not be excused on the ground that
20 the discovery sought is objectionable unless the party failing to act has applied for a protective
21 order as provided by Rule 36 C.

1 **FAILURE TO MAKE DISCOVERY; SANCTIONS**

2 **RULE 46**

3 **A Motion for order compelling discovery.** A party, upon reasonable notice to other
4 parties and all persons affected thereby, may [apply] **move** for an order compelling discovery as
5 follows:

6 A(1) **Appropriate court.**

7 A(1)(a) **Parties.** [An application] **A motion** for an order [to] **directed against** a party
8 may be made to the court in which the action is pending[,] and, on matters relating to a deponent's
9 failure to answer questions at a deposition, [such an application] **a motion** may also be made to [a
10 court of competent jurisdiction in the political subdivision] **the circuit court for the county** where
11 the deponent is located.

12 A(1)(b) **Non-parties.** [An application] **A motion** for an order [to] **directed against** a
13 deponent who is not a party shall be made to [a court of competent jurisdiction in the political
14 subdivision] **the circuit court for the county** where the non-party deponent is located.

15 A(2) **Motion.** If a party fails to furnish a report under Rule 44 B or C, or if a deponent fails
16 to answer a question propounded or [submitted] **served** under [Rules] **Rule 39** or **Rule 40**, or if a
17 corporation or other entity fails to make a designation under Rule 39 C(6) or Rule 40 A, or if a party
18 fails to respond to a request for a copy of an insurance agreement or policy under Rule 36 B(2), or if
19 a party in response to a request for **production or** inspection submitted under Rule 43 fails to
20 **produce or to** permit inspection as requested, the discovering party may move for an order
21 compelling discovery in accordance with the request. Any motion made under this subsection shall
22 [set out] **identify** at the beginning of the motion the items that the moving party seeks to discover.
23 When taking a deposition on oral examination, the proponent of the question may complete or
24 adjourn the examination before applying for an order.

25 If the court denies the motion in whole or in part, it may make [such] **any** protective order
26 [as] it would have been empowered to make on a motion made pursuant to Rule 36 C.

1 A(3) **Evasive or incomplete answer.** For purposes of this section, an evasive or
2 incomplete answer is to be treated as a failure to answer.

3 A(4) **Award of expenses of motion.** If the motion is granted, the court may, after an
4 opportunity for hearing, require the party or deponent whose conduct necessitated the motion or
5 the party or attorney advising such conduct, or both of them, to pay to the moving party the
6 reasonable expenses incurred in obtaining the order, including [*attorney's*] **attorney** fees, unless
7 the court finds that the opposition to the motion was substantially justified or that other
8 circumstances make an award of expenses unjust.

9 If the motion is denied, the court may, after an opportunity for hearing, require the moving
10 party or the attorney advising the motion, or both of them, to pay to the party or deponent who
11 opposed the motion the reasonable expenses incurred in opposing the motion, including
12 [*attorney's*] **attorney** fees, unless the court finds that the making of the motion was substantially
13 justified or that other circumstances make an award of expenses unjust.

14 If the motion is granted in part and denied in part, the court may apportion the reasonable
15 expenses incurred in relation to the motion among the parties and persons in a just manner.

16 **B Failure to comply with order.**

17 B(1) **Sanctions by court in the county where the deponent is located.** If a deponent fails
18 to be sworn or to answer a question after being directed to do so by a circuit court judge [*in*] of the
19 county in which the deponent is located, the failure may be considered a contempt of court.

20 B(2) **Sanctions by court in which action is pending.** If a party or an officer, director, or
21 managing agent or a person designated under Rule 39 C(6) or **Rule** 40 A to testify on behalf of a
22 party fails to obey an order to provide or permit discovery, including an order made under section
23 A of this rule or Rule 44, the court in which the action is pending may make [*such orders*] **any order**
24 in regard to the failure as [*are*] is just[,] including, among others, the following:

25 B(2)(a) **Establishment of facts.** An order that the matters [*regarding which the order was*
26 *made*] **that caused the motion for the sanction** or any other designated facts shall be taken to be

1 established for the purposes of the action in accordance with the claim of the party obtaining the
2 order[;].

3 B(2)(b) **Designated matters.** An order refusing to allow the disobedient party to
4 support or oppose designated claims or defenses, or prohibiting the disobedient party from
5 introducing designated matters in evidence[;].

6 B(2)(c) **Strike, stay, or dismissal.** An order striking out pleadings or parts thereof, or staying
7 further proceedings until the order is obeyed, or dismissing the action or any part thereof, or
8 rendering a judgment by default against the disobedient party[;].

9 B(2)(d) **Contempt of court.** In lieu of or in addition to any of the [*foregoing orders or*
10 *in addition thereto*] **orders listed in paragraphs B(2)(a), B(2)(b), or B(2)(c) of this rule,** an order
11 treating as a contempt of court the failure to obey any order except an order to submit to a
12 physical or mental examination.

13 B(2)(e) **Inability to produce person.** [*Such orders*] **Any of the orders** [*as are*] listed in
14 paragraphs [*(a), (b), and (c) of this subsection*] **B(2)(a), B(2)(b), and B(2)(c) of this rule,** [*where*]
15 **when** a party has failed to comply with an order under Rule 44 A requiring the party to produce
16 another for examination, unless the party failing to comply shows inability to produce [*such*] **the**
17 person for examination.

18 B(3) **Payment of expenses.** In lieu of or in addition to any order listed in subsection [(2)
19 *of this section*] **B(2) of this rule,** [*or in addition thereto,*] the court shall require the party failing to
20 obey the order or the attorney advising [*such*] **that** party, or both, to pay the reasonable expenses,
21 including [*attorney's*] **attorney** fees, caused by the failure, unless the court finds that the failure
22 was substantially justified or that other circumstances make an award of expenses unjust.

23 **C Expenses on failure to admit.** If a party fails to admit the genuineness of any
24 document or the truth of any matter, as requested under Rule 45, and if the party requesting the
25 [*admissions*] **admission** thereafter proves the genuineness of the document or the truth of the
26 matter, the party requesting the [*admissions*] **admission** may apply to the court for an order

1 requiring the other party to pay the party requesting the [admissions] **admission** the reasonable
2 expenses incurred in making that proof, including reasonable [attorney's] **attorney** fees. The court
3 shall make the order unless it finds that: [(1)] the request was held objectionable pursuant to Rule
4 45 B or C[, or (2)]; the admission sought was of no substantial importance[, or (3)]; the party failing
5 to admit had reasonable [ground] **grounds** to believe that [such party] **it** might prevail on the
6 matter[, or (4)]; **or** there was other good reason for the failure to admit.

7 **D Failure of party to attend at own deposition or to respond to request for**
8 **inspection [or to inform of question regarding the existence of coverage of liability insurance**
9 **policy].** If a party or an officer, director, or managing agent of a party or a person designated under
10 Rule 39 C(6) or **Rule** 40 A to testify on behalf of a party fails [(1)] to appear before the officer who is
11 to take the deposition of that party or person, after being served with a proper notice, or [(2)] to
12 comply with or **to** serve objections to a request for production [and] **or** inspection submitted under
13 Rule 43, after proper service of the request, the court [in which] **where** the action is pending on
14 motion may make [such orders] **any order** in regard to the failure as [are] **is** just[, including among
15 others it may take] **including, but not limited to,** any action authorized under [subsection B(2)(a),
16 (b), and (c)] **paragraphs B(2)(a), B(2)(b), and B(2)(c)** of this rule. In lieu of any order or in addition
17 thereto, the court shall require the party failing to act or the attorney advising [such] **that** party, or
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24 adjourn the examination before applying for an order. If the court denies the motion in whole or in
25 part, it may make [such] **any** protective order [as] it would have been empowered to make on a
26 motion made pursuant to Rule 36 C.

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10 them, to pay to the party or deponent who opposed the motion the reasonable expenses incurred
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11 physical or mental examination.

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15 produce another **person** for examination, unless the party failing to comply shows inability to
16 produce [*such*] **the** person for examination.

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19 obey the order or the attorney advising [*such*] **that** party, or both, to pay the reasonable expenses,
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12 | submitted under Rule 43, after proper service of the request, the court [in which] **where** the action
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