



The Motion to Compel Toolkit

Four working tools for the moment discovery stops moving

- Tool 1. Discovery Response Decision Tree. Choose the right path when a response is late, partial, or evasive.
- Tool 2. Motion to Compel Pre-Filing Checklist, with a meet-and-confer certification log.
- Tool 3. Rule 37 Sanctions Risk Assessment. Score the strength of your position before you file.
- Tool 4. Motion Drafting Outline, plus a meet-and-confer letter template and a motion skeleton.

READ THIS FIRST

This toolkit is an educational resource produced by Venio Systems. It is not legal advice, and it does not create an attorney-client relationship. The Federal Rules of Civil Procedure (FRCP) are the baseline throughout. Local rules, judges' standing orders, and state procedure frequently add requirements such as pre-motion letters, joint discovery statements, page limits, or shortened deadlines. Verify every rule reference, deadline, and local requirement against the current text of the rules and your court's own orders before you rely on anything in this document.

Companion reading. Motion to Compel, What It Means in the Discovery Process, on the Venio blog.

How to use this toolkit

A motion to compel is the formal request that turns a discovery inquiry into a court order. It is also, in practice, an admission that the informal process has broken down. Courts look closely at what you did before you filed, which means the work that decides the motion happens weeks before the motion is written. Use the four tools in sequence.

Tool	Use it when	What it produces
1. Decision Tree	A response is late, incomplete, or objections look boilerplate.	A decision on whether to escalate, and to what.
2. Pre-Filing Checklist	You have decided escalation is likely.	A documented, certifiable conferral record.
3. Sanctions Risk Assessment	Before you commit to filing.	A candid score of how your position reads to a judge.
4. Drafting Outline	You are filing.	A complete motion structure and supporting exhibits.

THE SINGLE MOST COMMON FAILURE

Rule 37(a)(1) requires that a motion to compel include a certification that the movant has in good faith conferred, or attempted to confer, with the party failing to make disclosure or discovery, in an effort to obtain it without court action. A certification that cannot point to specific dates, participants, and topics is the fastest way to lose a motion that was otherwise winnable. Tool 2 exists to make that record while it is still easy to make.

Tool 1. Discovery Response Decision Tree

Work top to bottom. Stop at the first branch that matches your facts.

Start here. What did the responding party actually do

Branch	What you are seeing	Threshold questions	Likely path
A	Nothing. No response, no objections, no production.	Has the response deadline actually run under Rule 34(b)(2)(A) or Rule 33(b)(2), counting any Rule 29 stipulation or court order that changed it? Was service proper?	Confirm the deadline, then send a deficiency letter. Note that untimely objections may be waived, though courts can excuse this for good cause.
B	Objections only. Nothing produced.	Are the objections stated with specificity? Does each one state whether responsive material is being withheld on the basis of that objection, as Rule 34(b)(2)(C) requires?	Deficiency letter targeting boilerplate. Ask, in writing, whether anything is being withheld. A refusal to answer that question is strong motion material.
C	Partial production. Objections to the rest.	Do you know what is missing, and can you describe it concretely? Is the gap a category, a custodian, a date range, or a source?	Narrow the dispute first. Motions that ask for everything tend to get apportioned. Motions that ask for three defined things tend to get granted.
D	Production made, but it looks evasive or incomplete.	Rule 37(a)(4) treats an evasive or incomplete disclosure, answer, or response as a failure to disclose, answer, or respond. Can you show the gap rather than assert it?	Build the evidentiary showing before you file. Gaps proven from the production itself are far more persuasive than suspicion.
E	Deposition problem. A deponent refused to answer, or no Rule 30(b)(6) designation was made.	Rule 37(a)(3)(B) covers a deponent who fails to answer under Rule 30 or 31, and an entity that fails to designate under Rule 30(b)(6) or 31(a)(4).	For an oral deposition, the examining party may complete or adjourn the examination before moving for an order.
F	The producing party is a nonparty under a Rule 45 subpoena.	Different rule, different forum. Rule 37(a)(2) directs that a motion for an order to a nonparty be made in the court where the discovery is or will be taken.	Do not file a Rule 37 motion against a nonparty out of habit. Confirm the correct rule and the correct court.
G	The other side never made its Rule 26(a) disclosures.	Rule 37(a)(3)(A) permits a motion to compel disclosure, and for appropriate sanctions, where a party fails to make a disclosure required by Rule 26(a).	Confer, then move. This branch is usually the cleanest to prove.

Every branch converges on the same gate

Whatever branch you are on, you cannot file until you have conferred in good faith, or made a documented attempt to confer, and the attempt has failed. That gate is Rule 37(a)(1), and it is the subject of Tool 2.

BEFORE YOU ESCALATE, ASK THE HARDER QUESTION

Is the material you are fighting for genuinely proportional to the needs of the case under Rule 26(b)(1), or is it a matter of principle? Would a narrowed request get you eighty percent of the value with none of the motion practice? If you win, what do you actually get, and when Judges notice which side is trying to resolve the dispute and which side is building a record? Be the first one.

Tool 2. Motion to Compel Pre-Filing Checklist

Print this, or fill it in the DOCX. Everything here is designed to be attachable as an exhibit or convertible into a Rule 37(a)(1) certification.

Section A. Confirm the request was properly made

- ☐ The request or interrogatory was properly served, and the proof of service is in the file.
- ☐ The request is within the scope of Rule 26(b)(1), meaning relevant to a claim or defense and proportional to the needs of the case.
- ☐ The request is specific enough to be enforceable. A court cannot compel compliance with a request nobody can define.
- ☐ The response deadline is calculated correctly, including any Rule 26(d)(2) early request timing, any Rule 29 stipulation, and any court order shortening or extending time.
- ☐ Any agreed extensions are confirmed in writing, not by memory.

Section B. Diagnose the deficiency

- ☐ The specific requests at issue are identified by number, not described in general terms.
- ☐ For each request, the deficiency is characterized precisely. No response, boilerplate objection, withheld material, incomplete production, or evasive answer.
- ☐ For objections, you have checked whether the responding party stated whether material is being withheld on the basis of the objection.
- ☐ For ESI, the form of production was specified or agreed, and the deficiency in form is documented if that is the issue.
- ☐ You can articulate, in one sentence per request, what you are missing and why it matters to a claim or defense.

Section C. Meet and confer, the record that decides the motion

- ☐ A written deficiency letter was sent, identifying each request and each deficiency.
- ☐ A live conferral, meaning a call or a meeting rather than an email exchange, was requested and either held or refused. Note that some local rules require a live conference specifically.
- ☐ Every conferral, including attempted and refused ones, is logged with date, participants, method, topics, and outcome.
- ☐ Any partial agreements reached during conferral are confirmed in writing and, if appropriate, removed from the motion.
- ☐ The dispute has been narrowed as far as it can be. What remains is genuinely contested.

Meet and confer log

Date	Method	Participants	Requests discussed	Outcome or refusal

Section D. Procedural gates

- ☐ The forum is correct. A motion for an order against a party goes to the court where the action is pending. A motion against a nonparty goes to the court where the discovery is or will be taken, per Rule 37(a)(2).
- ☐ Local rules have been checked for a pre-motion conference requirement, a discovery letter brief procedure, or a joint statement requirement.
- ☐ The assigned judge's standing orders have been checked. Many judges impose their own discovery motion procedure that overrides the default.
- ☐ Any discovery cutoff or motion deadline in the scheduling order has been checked. Late discovery motions get denied on timing alone.
- ☐ Page limits, meet-and-confer certification format, and required exhibits are confirmed.

Section E. Relief and expenses

- ☐ The relief requested is stated as a specific, orderable act. Produce these documents, answer these interrogatories, designate a witness on these topics, by this date.
- ☐ You have decided whether to seek expenses under Rule 37(a)(5), which provides that if the motion is granted, the court must generally require payment of the movant's reasonable expenses including attorney's fees, subject to stated exceptions.
- ☐ You have honestly assessed the reverse. Rule 37(a)(5)(B) provides that if the motion is denied, the court must generally require the movant to pay the opposing party's reasonable expenses, subject to the same kinds of exceptions.
- ☐ A proposed order is drafted and attached.

Rule 37(a)(1) certification, working draft

Adapt to your court's required language. Do not file this without confirming the format your court expects.

Pursuant to Rule 37(a)(1) of the Federal Rules of Civil Procedure, counsel for **[movant]** certifies that the movant has in good faith conferred, or attempted to confer, with **[responding party]** in an effort to obtain the requested discovery without court action. Specifically, counsel sent a written deficiency letter on **[date]**, conferred by **[method]** on **[date]** with **[participants]**, and the parties were unable to resolve the disputes set out in this motion.

Tool 3. Rule 37 Sanctions Risk Assessment

This is a judgment aid, not a scoring rubric with any legal standing. Its only purpose is to force a candid read of how your position will look to a judge who has seen a hundred discovery motions this year. Score each factor from 1 to 5, where 5 is the strongest position for the moving party.

Part 1. Strength of your motion

Factor	1 means	5 means	Score
Conferral record	Emails only, or one letter and a filing.	Written letter, live conference, dated log, narrowed disputes.	
Specificity of the ask	Compel full and complete responses to all requests.	Three defined categories, named custodians, a date range.	
Proportionality under Rule 26(b)(1)	Broad requests, marginal relevance, high burden.	Narrow, central to a claim or defense, low burden to produce.	
Evidence of the deficiency	You suspect material is missing.	You can show the gap from the production itself.	
Quality of their objections	Specific, supported, and they told you what is withheld.	Boilerplate, unsupported, silent on what is withheld.	
Timing	Filed near the discovery cutoff, or late.	Filed promptly after conferral failed, with time to comply.	
Local compliance	Standing orders and local rules not checked.	Every local requirement satisfied and documented.	

Total, out of 35: _____

Reading the score

Range	What it usually means	Suggested action
28 to 35	Well positioned. The record does the work.	File. Consider seeking expenses under Rule 37(a)(5).
20 to 27	Viable but exposed on at least one factor.	Fix the weakest factor before filing. It is usually conferral or specificity.
12 to 19	Likely to be apportioned or denied in part.	Narrow the dispute. Confer again. Reassess.
7 to 11	You are the one at risk on expenses.	Do not file yet. Rule 37(a)(5)(B) can shift fees to a movant who loses.

Part 2. Exposure if an order is already in place and ignored

If a discovery order has been entered and the other side has not complied, the analysis moves to Rule 37(b)(2)(A), which authorizes a range of sanctions for failure to obey a discovery order. These include directing that designated facts be taken as established, prohibiting the disobedient party from supporting or opposing designated claims or defenses or from introducing designated matters in evidence, striking pleadings in whole or in part, staying proceedings until the order is obeyed, dismissing the action in whole or in part, rendering a default judgment, and treating the failure to obey as contempt of court, other than an order to submit to a physical or mental examination. Rule 37(b)(2)(C) further provides that the court must generally order the disobedient party, the attorney advising that party, or both, to pay the 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.

A NOTE ON LOST ESI, WHICH IS A DIFFERENT RULE

Rule 37(e) governs electronically stored information that should have been preserved, was lost because a party failed to take reasonable steps to preserve it, and cannot be restored or replaced through additional discovery. The severe measures under Rule 37(e)(2), including an adverse inference instruction, presumption, dismissal, or default, are available only on a finding that the party acted with the intent to deprive another party of the information's use in the litigation. If your dispute is really about spoliation rather than about a party sitting on documents it still has, you are in Rule 37(e), not in a standard motion to compel. Read the rule before you choose your vehicle.

Tool 4. Motion Drafting Outline

A structure a judge can follow in four minutes. Adapt to your court's required format, which may differ substantially, including courts that require a joint statement or a letter brief instead of a formal motion.

Section by section

Section	What goes in it	Length
Caption and title	Court, parties, case number, motion title, per local formatting rules.	As required
Introduction	What you asked for, what you did not get, what you want the court to order, and by when. A judge should know the whole dispute from this alone.	1 to 2 paragraphs
Rule 37(a)(1) certification	Certification of good faith conferral or attempted conferral, with specifics. Place it where your local rules require, which is sometimes a separate document.	1 paragraph
Factual background	The discovery timeline. Service date, response date, deficiency letter, conferral, refusal. Dates, not adjectives.	Short
The discovery at issue	Request by request. Quote the request, quote the response, state the deficiency. This is the heart of the motion, and it should read as a table if the court permits.	Longest section
Legal standard	Rule 26(b)(1) scope and proportionality. Rule 37(a) grounds. Rule 37(a)(4) on evasive or incomplete responses. Add controlling authority from your circuit, verified.	Short
Argument	Relevance and proportionality for each disputed category, then why the objections fail. Answer their best argument rather than ignoring it.	Substantive
Expenses	If you are seeking fees, invoke Rule 37(a)(5) and address the exceptions directly.	1 paragraph
Conclusion and relief	A numbered list of orderable acts with a compliance deadline. Make it copy-and-pasteable into an order.	Short
Proposed order	Attached, mirroring the numbered relief exactly.	1 page
Exhibits	The requests, the responses, the deficiency letter, the conferral correspondence, the log, and any declaration your court requires.	As needed

Template A. Meet and confer deficiency letter

Send this before you file. It becomes an exhibit either way. Replace every bracketed field.

[Date] Via email and [method]

[Opposing counsel name and firm]

Re: [Case caption], No. [case number]. Deficiencies in [party]'s responses to [discovery set].

Dear [Counsel],

We write regarding [party]'s [responses and objections/failure to respond] to [Plaintiff's / Defendant's] [First Set of Requests for Production / Interrogatories], served on [date] and due on [date].

The following deficiencies remain outstanding.

1. Request No. [x]. [Quote or summarize the request.] [Party] responded [quote the response]. The response is deficient because [no documents were produced / the objection is stated in general terms and does not identify the basis / the response does not state whether responsive material is being withheld on the basis of the objection, which Rule 34(b)(2)(C) requires / the production is incomplete because [state the specific gap and how you know it exists]].

2. Request No. [x]. [Repeat the structure. One paragraph per request. Do not merge them.]

We ask that [party] [produce the outstanding material / serve amended responses] by [date]. We are available to confer by telephone on [two or three specific dates and times] to resolve or narrow these issues without motion practice. If we do not hear from you by [date], we will assume conferral has failed and will proceed under Rule 37(a).

We remain willing to discuss reasonable narrowing of any request you consider overbroad.

Sincerely, [Name]

Template B. Request-by-request dispute table

The single highest leverage exhibit in a motion to compel. It lets a judge rule request by request without reconstructing the record.

Req. No.	Request, verbatim or summarized	Response and objections	Why it is deficient	Relief sought

Template C. Relief block

Write the relief as the order you want signed.

- Order [party] to produce all documents responsive to Request Nos. [x, y, z], without objection, within [n] days of the order.
- Order [party] to serve amended answers to Interrogatory Nos. [x, y], without objection, within [n] days of the order.
- Order [party] to designate and prepare one or more witnesses under Rule 30(b)(6) on Topics [x, y] within [n] days.
- Order [party] to state, in writing, whether any responsive material is being withheld on the basis of each objection asserted.
- Award [movant] its reasonable expenses, including attorney's fees, incurred in making this motion, pursuant to Rule 37(a)(5).

Rule quick reference

Rule numbers only. Read the current text of each rule before relying on it, and check for amendments.

Rule	What it covers, in brief
Rule 26(a)	Required initial and other disclosures. Failure to make them is a ground for a motion to compel disclosure under Rule 37(a)(3)(A).
Rule 26(b)(1)	Scope of discovery. Relevance to a claim or defense, and proportionality to the needs of the case.
Rule 26(d)(2)	Early delivery of Rule 34 requests, and the timing consequence for the response.
Rule 26(f)	The parties' conference, including the discovery plan and ESI issues.
Rule 29	Stipulations about discovery procedure, including modifying response deadlines, subject to court approval in some circumstances.
Rule 30, Rule 31	Oral and written depositions. Includes the Rule 30(b)(6) organizational designation.
Rule 33	Interrogatories, including the response deadline and the requirement that objections be stated with specificity.
Rule 34	Requests for production, inspection, and entry onto land. Includes the response deadline, the specificity requirement for objections, the requirement to state whether material is withheld, and the form of ESI production.
Rule 37(a)(1)	The good faith conferral certification requirement. The gate every motion to compel must pass.
Rule 37(a)(2)	Where to file. Party motions in the court where the action is pending. Nonparty motions in the court where the discovery is or will be taken.
Rule 37(a)(3)	The grounds for a motion to compel disclosure or discovery.
Rule 37(a)(4)	An evasive or incomplete disclosure, answer, or response is treated as a failure to disclose, answer, or respond.
Rule 37(a)(5)	Payment of expenses. Applies when the motion is granted, when it is denied, and when it is granted in part and denied in part.
Rule 37(b)(2)	Sanctions for failing to obey a discovery order, and the expense-shifting provision that accompanies them.
Rule 37(e)	Failure to preserve electronically stored information. A separate framework from a motion to compel.
Rule 45	Subpoenas to nonparties, with its own compliance and enforcement provisions.

Where the platform work happens

Most motions to compel hinge on whether your tools can surface gaps, prove what was collected and when, produce in the required format, and reconstruct the chain of custody. Venio brings legal hold, ECA, review, and production into one platform, turning a motion to compel from a reconstruction exercise into a reporting exercise.

→ [Learn more at veniosystems.com](https://veniosystems.com), or request a demo.

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