

91 (f)(3) there were reasonable grounds to believe that the party failing to admit might
92 prevail on the matter;

93 (f)(4) that the request is not proportional under Rule 26(b)(1); or

94 (f)(5) there were other good reasons for the failure to admit.

95 (g) Failure of party to attend at own deposition. The court on motion may take any
96 action authorized by paragraph (e)(2) if a party or an officer, director, or managing agent
97 of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a
98 party fails to appear before the officer taking the deposition, after proper service of the
99 notice. The failure to act described in this paragraph may not be excused on the ground
100 that the discovery sought is objectionable unless the party failing to act has applied for a
101 protective order under paragraph (b).

102 (h) Failure to disclose. If a party fails to disclose a witness, document or other
103 material as required by Rule 26(a) or Rule 26(e)(1), or to amend a prior response to
104 discovery as required by Rule 26(e)(2), that party shall not be permitted to use the
105 witness, document or other material at any hearing unless the failure to disclose is
106 harmless or the party shows good cause for the failure to disclose. In addition to or in
107 lieu of this sanction, the court on motion may take any action authorized by paragraph
108 (e)(2).

109 (i) Failure to preserve evidence. Nothing in this rule limits the inherent power of the
110 court to take any action authorized by paragraph (e)(2) if a party destroys, conceals,
111 alters, tampers with or fails to preserve a document, tangible item, electronic data or
112 other evidence in violation of a duty. Absent exceptional circumstances, a court may not
113 impose sanctions under these rules on a party for failing to provide electronically stored
114 information lost as a result of the routine, good-faith operation of an electronic
115 information system.

116 Advisory Committee Notes

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