

A pedestrian from State A sued a driver from State B in a federal court in State B to recover \$85,000 in damages. The pedestrian alleged that the driver ran a red light and hit the pedestrian in a crosswalk. Prior to trial, the driver's attorney disclosed that he intended to call a witness to testify that the traffic light facing the driver was green when the pedestrian entered the crosswalk. To verify whether the witness is truthful, the pedestrian's attorney sent the witness interrogatories.

The witness failed to respond to any of the interrogatories. After attempting to confer with the witness and the driver's attorney, the pedestrian's attorney filed a motion to compel the witness to respond to the interrogatories. The driver's attorney opposed the motion.

How should the court rule on the pedestrian's motion to compel?

- A. The court should deny the motion and award the driver reasonable expenses incurred in opposing the motion.
- B. The court should deny the motion but not award the driver reasonable expenses incurred in opposing the motion.
- C. The court should grant the motion and award the pedestrian reasonable expenses incurred in making the motion.
- D. The court should grant the motion but not award the pedestrian reasonable expenses incurred in making the motion.

Explanation:

FRCP 37 allows a party to file a **motion to compel** a discovery response or disclosure. **Interrogatories** are a [method of discovery](#) in which a party serves **written questions** on another party that inquire about any matter within the scope of discovery. However, [interrogatories](#) may **not be served on nonparties**. As a result, the nonparty witness need not respond to the pedestrian's interrogatories, and the court should deny the pedestrian's motion to compel those responses (**Choices C & D**).

When ruling on a motion to compel, the court may **award reasonable expenses** associated with the motion based on the following scenarios:

- If the **motion is granted**, the court **must award the movant** the reasonable expenses incurred in making the motion unless an exception applies.
- If the **motion is granted in part and denied in part**, the court **may apportion** the reasonable expenses as it sees fit.
- If the **motion is denied**, the court **must award the nonmovant** the reasonable expenses incurred in opposing the motion unless the motion was substantially justified or the award would be unjust.*

Here, the pedestrian's motion to compel was not substantially justified since the pedestrian's attorney should have known that interrogatories may not be served on nonparties. And an award of reasonable expenses would be fair because the motion wasted legal and judicial resources. Therefore, the court should deny the pedestrian's motion to compel and award the driver reasonable expenses incurred in opposing the motion (**Choice B**).

*Before awarding expenses, the court must give the parties an opportunity to be heard. Additionally, the court may issue a protective order when it denies a motion in whole or in part.

Educational objective:

If a court denies a motion to compel, it must award the nonmovant the reasonable expenses incurred in opposing the motion unless the motion was substantially justified or the award would be unjust. If the motion is granted, the court must award the movant's expenses. If it is granted in part and denied in part, expenses may be apportioned.

FRCP = Federal Rule of Civil Procedure.

References

- Fed. R. Civ. P. 33 (interrogatories).
- Fed. R. Civ. P. 37(a)(5) (motion to compel expenses).
- 8B Charles Alan Wright et al., Federal Practice and Procedure § 2288 (3d ed. 2020) (explaining how a court should award expenses in ruling on a motion to compel).

Motion to compel expenses

