

## **Rule 35. Physical and Mental Examinations**

### **(a) ORDER FOR AN EXAMINATION.**

(1) *In General.* The court may order a party whose mental or physical condition is in controversy to submit to a physical or mental examination by a suitable licensed or certified examiner. The court has the same authority to order a party to produce for examination a person who is in its custody or under its legal control.

(2) *Motion and Notice; Contents of the Order.* The order:

(A) may be made only on motion for good cause and on notice to all parties and the person to be examined; and

(B) must specify the time, place, manner, conditions, and scope of the examination, as well as the person or persons who will perform it.

### **(b) EXAMINER'S REPORT.**

(1) *Request by the Party or Person Examined.* The party who moved for the examination must, on request, deliver to the requester a copy of the examiner's report, together with like reports of all earlier examinations of the same condition. The request may be made by the party against whom the examination order was issued or by the person examined.

(2) *Contents.* The examiner's report must be in writing and must set out in detail the examiner's findings, including diagnoses, conclusions, and the results of any tests.

(3) *Request by the Moving Party.* After delivering the reports, the party who moved for the examination may request—and is entitled to receive—from the party against whom the examination order was issued like reports of all earlier or later examinations of the same condition. But those reports need not be delivered by the party with custody or control of the person examined if the party shows that it could not obtain them.

(4) *Waiver of Privilege.* By requesting and obtaining the examiner's report, or by deposing the examiner, the party examined waives any privilege it may have—in that action or any other action involving the same controversy—concerning testimony about all examinations of the same condition.

(5) *Failure to Deliver a Report.* The court on motion may order—on just terms—that a party deliver the report of an examination. If the report is not provided, the court may exclude the examiner's testimony at trial.

(6) *Scope.* Rule 35(b) applies also to an examination made by the parties' agreement, unless the agreement states otherwise. Rule 35(b) does not preclude obtaining an examiner's report or deposing an examiner under other rules.

## **COMMENT TO 2018 AMENDMENTS**

This rule conforms to Civil Rule 35. Although Rule 26(b)(3) provides that the requesting party is entitled to the results of an examination, mental examinations in domestic relations cases may raise sensitive issues, and Rule 26(c)(1) provides authority for judges to issue protective orders in appropriate cases.

## **COMMENT**

While this Rule by its terms provides a general framework for examinations where a person's physical or mental condition is in controversy, it is not intended to preclude the

use of court-ordered medical, genetic blood and tissue grouping tests where such tests are relevant to matters at issue. These tests, when used to establish parentage, are specifically authorized by D.C. Code §16-2343.