

1 **Rule 35. Physical and mental examination of persons.**

2 (a) **Order for examination.** When the mental or physical condition or attribute of a
3 party or of a person in the custody or control of a party is in controversy, the court may
4 order the party to submit to a physical or mental examination by a suitably licensed or
5 certified examiner or to produce for examination the person in the party's custody or
6 control. The order may be made only on motion for good cause shown. All papers
7 related to the motion and notice of any hearing shall be served on a nonparty to be
8 examined. The order shall specify the time, place, manner, conditions, and scope of the
9 examination and the person by whom the examination is to be made. The person being
10 examined may record the examination by audio or video means unless the party
11 requesting the examination shows that the recording would unduly interfere with the
12 examination.

13 (b) **Report.** The party requesting the examination shall disclose a detailed written
14 report of the examiner, setting out the examiner's findings, including results of all tests
15 made, diagnoses and conclusions. If the party requesting the examination wishes to call
16 the examiner as a witness, the party shall disclose the examiner as an expert as
17 required by Rule 26(a)(3).

18 (c) **Sanctions.** If a party or a person in the custody or under the legal control of a
19 party fails to obey an order entered under paragraph (a), the court on motion may take
20 any action authorized by Rule 37(e), except that the failure cannot be treated as
21 contempt of court.

22 **Advisory Committee Notes**

23 Rule 35 has been substantially revised. A medical examination is not a matter of
24 right, but should only be permitted by the trial court upon a showing of good cause. Rule
25 35 has always provided, and still provides, that the proponent of an examination must
26 demonstrate good cause for the examination. And, as before, the motion and order
27 should detail the specifics of the proposed examination.

28 The parties and the trial court should refrain from the use of the phrase "independent
29 medical examiner," using instead the neutral appellation "medical examiner," "Rule 35
30 examiner," or the like.

Rule 35.**Effective Date: November 1, 2011**

31 The Committee has determined that the benefits of recording generally outweigh the
32 downsides in a typical case. The amended rule therefore provides that recording shall
33 be permitted as a matter of course unless the person moving for the examination
34 demonstrates the recording would unduly interfere with the examination.

35 Nothing in the rule requires that the recording be conducted by a professional, and it
36 is not the intent of the committee that this extra cost should be necessary. The
37 committee also recognizes that recording may require the presence of a third party to
38 manage the recording equipment, but this must be done without interference and as
39 unobtrusively as possible.

40 The former requirement of Rule 35(c) providing for the production of prior reports on
41 other examinees by the examiner was a source of great confusion and controversy. It is
42 the Committee's view that this provision is better eliminated, and in the amended rule
43 there is no longer an automatic requirement for the production of prior reports of other
44 examinations. Medical examiners will be treated as other expert witnesses are treated,
45 with the required disclosure under Rule 26 and the option of a report or a deposition.

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