

Rule 35. Physical, Mental, and Blood Examination of Persons**35.01 Order of Examinations**

In an action in which the physical or mental condition or the blood relationship of a party, or of an agent of a party, or of a person under control of a party, is in controversy, the court in which the action is pending may order the party to submit to, or produce such agent or person for a physical, mental, or blood examination by a suitably licensed or certified examiner. The order may be made only on motion for good cause shown and upon notice to the party or person to be examined and to all other parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is made.

(Amended effective March 1, 1994.)

35.02 Report of Findings

(a) If requested by the party against whom an order is made pursuant to Rule 35.01 or by the person examined, the party causing the examination to be made shall deliver to the requesting party a copy of a detailed written report of the examination setting out the examiner's findings and conclusions, together with like reports of all earlier examinations of the same condition. After such request and delivery, the party causing the examination to be made shall be entitled, upon request, to receive from the party or person examined a like report of any examination, previously or thereafter made, of the same physical, mental, or blood condition. If the party or person examined refuses to deliver such report, the court, on motion and notice, may make an order requiring delivery on such terms as are just, and, if an examiner fails or refuses to make such a report, the court may exclude the examiner's testimony if offered at the trial.

(b) By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the adverse party waives any privilege the party may have in that action or any other involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine the party or the person under the party's control with respect to the same physical, mental, or blood condition.

(Amended effective March 1, 1994.)

35.03 Waiver of Medical Privilege

If at any stage of an action a party voluntarily places in controversy the physical, mental, or blood condition of that party, a decedent, or a person under that party's control, such party thereby waives any privilege that party may have in that action regarding the testimony of every person who has examined or may thereafter examine that party or the person under that party's control with respect to the same physical, mental, or blood condition.

35.04 Medical Disclosures and Depositions of Medical Experts

When a party has waived medical privilege pursuant to Rule 35.03, such party within 14 days of a written request by any other party,

(a) shall furnish to the requesting party copies of all medical reports previously or thereafter made by any treating or examining medical expert, and

(b) shall provide written authority signed by the party of whom request is made to permit the inspection of all hospital and other medical records, concerning the physical, mental, or blood condition of such party as to which privilege has been waived.

Disclosures pursuant to this rule shall include the conclusions of such treating or examining medical expert.

Depositions of treating or examining medical experts shall not be taken except upon order of the court for good cause shown upon motion and notice to the parties and upon such terms as the court may provide.

(Amended effective January 1, 2020.)

Advisory Committee Comment - 1993 Amendment

The amendments to Rule 35 are intended to expand the power of the courts to order examinations by professionals other than physicians. This amendment is generally consistent with amendments made to Fed. R. Civ. P. 35 in 1991, though the state and federal rules have always been somewhat different.

This amendment recognizes that examination may be appropriate by, for example, a licensed psychologist, dentist, audiologist, or physical or occupational therapist. These licensed professionals are not physicians but may, and often do, provide valuable information or testimony. See Fed. R. Civ. P. 35, Notes of Advisory Committee--1991 Amendment, reprinted in Federal Civil Judicial Procedure & Rules 126 (West pamph. 1993).

Advisory Committee Comment - 2019 Amendment

Rule 35.04 is amended as part of the extensive amendments made to the timing provisions of the rules. These amendments implement the adoption of a standard "day" for counting deadlines under the rules - counting all days regardless of the length of the period and standardizing the time periods, where practicable, to a 7-, 14-, 21- or 28-day schedule. The only change to this rule lengthens the 10-day period to respond to written requests to a 14-day period. This change affects only the time limit, and is not intended to have any other effect.