

1 **NRCP 35 ALT 2 – Proposed**
2 **(Adopt federal with edits)**

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

4 **(a) Order for Examination.**

5 (1) **In General.** The court where the action is pending may order a party
6 whose mental or physical condition—including blood group—is in controversy to
7 submit to a physical or mental examination by a suitably licensed or certified
8 examiner. The court has the same authority to order a party to produce for
9 examination a person who is in its custody or under its legal control.

10 **(2) Motion and Notice; Contents of the Order.**

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

13 (B) The order must specify the time, place, manner, conditions,
14 and scope of the examination, as well as the person or persons who will perform it.
15 The examination must take place in an appropriate professional setting in the
16 judicial district in which the case is pending, unless otherwise agreed by the parties
17 or ordered by the court.

18 (3) **Recording the Examination.** The party against whom the order is
19 being requested may seek a condition in the order, upon a showing of good cause,
20 allowing that party to audio record the examination at that party's expense. The
21 examiner may also have the examination audio recorded at his or her expense. If
22 the party against whom the order is issued is allowed to audio record the
23 examination, the party must advise the examiner of the recording prior to
24 commencement of the examination. If the examiner elects to audio record the

1 examination, the examiner must advise of the recording prior to the examination.
2 Any party may obtain a copy of any audio recording pursuant to a written request
3 for the recording.

4 **(4) Observing the Examination.** The party against whom the order is
5 being requested may seek a condition in the order, upon a showing of good cause,
6 allowing that party to have one observer present for the examination, except that the
7 observer may not be the party's attorney, or anyone employed by the party or the
8 party's attorney. Such an observer shall not in any way interfere, obstruct, or
9 participate in the examination, and shall only observe the examination, except as
10 otherwise specified in the order. In the event the party against whom the order was
11 issued is a minor, the minor is permitted to have a parent or legal guardian observe
12 the examination without leave of court.

13 **(b) Examiner's Report.**

14 **(1) Request by the Party or Person Examined.** Unless otherwise
15 ordered by the judge or discovery commissioner for good cause, the party who moved
16 for the examination must provide, upon a request by the party against whom the
17 examination order was issued or by the person examined, a copy of the examiner's
18 report within thirty days of the examination or by the date of the applicable expert
19 disclosure deadline, whichever occurs first.

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

23 **(3) Request by the Moving Party.** After delivering the reports, the
24 party who moved for the examination may request—and is entitled to receive—from

1 the party against whom the examination order was issued like reports of all earlier
2 or later examinations of the same condition. But those reports need not be delivered
3 by the party with custody or control of the person examined if the party shows that
4 it could not obtain them.

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

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

12 **(6) Scope.** This subdivision (b) applies also to an examination made by
13 the parties’ agreement, unless the agreement states otherwise. This subdivision does
14 not preclude obtaining an examiner’s report or deposing an examiner under other
15 rules.

16
17
18 **ADVISORY COMMITTEE NOTE—2018 AMENDMENT**

19 [This rule needs a more detailed advisory committee note.]

20 As permitted by the rule, either party may transcribe the audio recording of
21 the examination. It is envisioned that the primary purpose of such transcription
22 would be to address by motion any irregularity that occurred during the examination.
23 At trial, a party may use any portion of the transcription as permitted by Nevada
24 law of evidence.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24