

Alabama Rules of Civil Procedure

V. DEPOSITIONS AND DISCOVERY

Rule 35.

Physical and mental examination of persons.

(a) *Order for examination.* When the mental or physical condition (including the blood group) of a party, or of a person in the custody or under the legal control of a party, is in controversy, the court in which the action is pending may order the party to submit to a physical or mental examination by a suitably licensed or certified examiner or to produce for examination the person in the party's custody or legal control. The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.

(b) *Report of examiner.*

(1) If requested by the party against whom an order is made under Rule 35(a) or 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 examiner setting out the examiner's findings, including results of all tests made, diagnoses and conclusions, together with like reports of all earlier examinations of the same condition. After delivery the party causing the examination shall be entitled upon request to receive from the party against whom the order is made a like report of any examination, previously or thereafter made, of the same condition, unless, in the case of a report of examination of a person not a party, the party shows that the party is unable to obtain it. The court on motion may make an order against a party requiring delivery of a report on such terms as are just, and, if an examiner fails or refuses to make a report, the court may exclude the examiner's testimony if offered at trial.

(2) By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the party examined 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 in respect of the same mental or physical condition.

(3) This subdivision applies to examinations made by agreement of the parties, unless the agreement expressly provides otherwise. This subdivision

does not preclude discovery of a report of an examiner or the taking of a deposition of the examiner in accordance with the provisions of any other rule.

(dc) *District court rule.* Rule 35 does not apply in the district courts.

[Amended eff. 10-1-95.]

Committee Comments on 1973 Adoption

Rule 35(a). The mental or physical condition of a party or a person in custody of a party can be made the basis of examination by a physician only upon a motion and good cause shown. Further, the physical or mental condition must be in controversy. The importance of these requirements were stressed in *Schlagenhauf v. Holder*, 379 U.S. 104, 85 S.Ct. 234, 13 L.Ed.2d 152 (1964).

Rule 35(b) requires the party causing the examination to furnish the examined party with all earlier examinations to which he may have access, including test results. The examined party must then make similar disclosure in return. Upon motion, a party may be required to deliver a report and failure to furnish a report could result in exclusion of the physician's testimony.

Rule 35(b)(2) is not intended to create a physician-patient privilege in Alabama.

Rule 35(b)(3) makes clear that this Rule applies to examinations by agreement and that other discovery devices may be used to obtain medical reports or testimony.

Committee Comments to October 1, 1995, Amendment to Rule 35

The amendment adopts modifications to F.R.Civ.P. 35 under which examinations may be conducted by suitably licensed specialists such as clinical psychologists, dentists, and occupational therapists. The former rule was limited to physicians.