

IN THE SUPREME COURT FOR THE STATE OF ALASKA

ORDER NO. 1122

Amending Civil Rule 35
concerning physical and mental
examinations.

IT IS ORDERED:

1. Civil Rule 35 is amended to provide:

(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 [PHYSICIAN] or to produce for examination the person in the party's [HIS] 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 [EXAMINING PHYSICIAN].**

(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 [HIM] a copy of a detailed written report of the examiner [EXAMINING PHYSICIAN] setting out the examiner's [HIS] 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 [HE] 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 [A PHYSICIAN] fails or refuses to make a report the court may exclude the examiner's [HIS] 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 [HE] 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 [HIM] 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 [EXAMINING PHYSICIAN] or the taking of a deposition of the examiner [PHYSICIAN] in accordance with the provisions of any other rule.

Supreme Court Order No. 1122
Effective Date: July 15, 1993
Page 3

DATED: February 19, 1993

EFFECTIVE DATE: July 15, 1993

Chief Justice Moore

Justice Rabinowitz

Justice Burke

Justice Matthews

Justice Compton