

Physical and mental examination of persons

In a proceeding for the custody, partial custody, or visitation of children, the court may order the child or children and/or any party to submit to and fully participate in an evaluation by an appropriate expert or experts. The order, which must be substantially in the form set forth in the Rules of Civil Procedure, may be made upon the court's own motion, upon the motion of a party with reasonable notice to the person to be examined, or by agreement of the parties. The order must specify the place, manner, conditions and scope of the examination and the person or persons by whom it will be made and to whom distributed.

In entering an order directing an evaluation, the court must consider all appropriate factors including the following, if applicable:

- (1) the allocation of the costs, including insurance coverage, if any, attendant to the undertaking of the evaluation and preparation of the resultant report and court testimony of any appointed expert;
 - (2) the execution of appropriate authorizations and/or consents to facilitate the examination;
 - (3) any deadlines imposed regarding the completion of the examination and payment of costs;
 - (4) the production of any report and of underlying data to counsel and/or any unrepresented party upon the completion of the examination; and
 - (5) any additional safeguards that are deemed appropriate as a result of the alleged presence of domestic violence and/or child abuse.
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DNA Testing- Paternity Testing

A court has the authority to order the parties to a custody action to submit to DNA testing.

If a party refuses to obey the order of court, the court may make an order refusing to allow the disobedient party to support or oppose designated claims or defenses, prohibiting the party from introducing in evidence designated documents, things or testimony, prohibiting the party from introducing evidence of physical or mental condition, or making such other order as is just. The willful failure or refusal of a party to comply with an order may also give rise to a finding of contempt and the imposition of such sanctions as may be deemed appropriate by the court, including, but not limited to, an adverse inference against the non-complying party. A petition for contempt alleging failure to comply with an order must be treated in an expedited manner.

Unless otherwise directed by the court, the expert must deliver to the court, to the attorneys of record and to any unrepresented party, copies of any reports arising from the evaluation setting out the findings, results of all tests made, diagnosis and conclusions. No reports may be filed of record or considered evidence unless and until admitted by the court. Any report which is prepared at the request of a party, with or without a court order, and which a party intends to introduce at trial, must be delivered to the court and the other party at least 30 days before trial. If the report or any information from the evaluator is provided to the court, the evaluator will be subject to cross-examination by all counsel and any unrepresented party without regard to who obtains or pays for the evaluation.

It is clearly within the trial court's discretion whether to order a physical or mental evaluation of party under this rule. Thus, the trial court is under no obligation to require a mother to submit to a psychological evaluation during a child custody proceeding in which she seeks modification of an order affording the grandparents primary physical custody of the child during her incarceration, where the trial court orders a home evaluation that addresses the concerns and questions raised by the grandparents in requesting the evaluation.

DRUG TESTING OF PARENTS

When a court includes a drug testing provision in a child custody order under Pa.R.C.P. No. 1915.8, a court reviewing the reasonableness of the order under the Fourth Amendment will balance the nature of the privacy interest upon which the order intrudes, the character of the intrusion that is complained of, and the nature and immediacy of the governmental concern at issue and the efficacy of the means for meeting it. The authority provided to courts by the rule is a manifestation of the state's compelling interest in the welfare of children. The absence of evidence that a parent who has moved to modify custody has used drugs does not preclude the trial court from requiring that the parent submit to, and pay for, drug testing, since a requirement that there be evidence of drug usage would nullify the rule.[]