



MICHAEL P. LOWRY, ESQ.
Nevada Bar No. 10666
E-mail: Michael.Lowry@wilsonelser.com
6689 Las Vegas Blvd. South, Suite 200
Las Vegas, NV 89119
Tel: 702.727.1400/Fax: 702.727.1401
Attorneys for Las Vegas Defense Lawyers

Electronically Filed
Apr 28 2026 10:24 AM
Elizabeth A. Brown
Clerk of Supreme Court

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

Steven Candelaria and Maurissa
Graham,

Petitioners,

vs.

Eighth Judicial District Court of the
State of Nevada, in and for the
County of Clark; and The Honorable
Jacob Reynolds,

Respondents,

and

LTF Club Operations Company, Inc.
d/b/a Life Time Fitness,

Real Parties in Interest

Supreme Ct. No.: 92276-COA

Dist. Ct. No.: A-23-878656-C

**Las Vegas Defense Lawyers'
Amicus Brief Supporting Real
Parties in Interest**

ORIGINAL PETITION

From the Eighth Judicial District Court, Clark County
The Honorable Jacob Reynolds, District Judge

Contents

Table of Authorities.....	iii
Attorney’s Certificate of Compliance	v
NRAP 26.1(a) Disclosure.....	vi
Identification of Amicus Curiae.....	vii
Certificate of Service	viii
Relief Sought	1
Issue Presented	1
Why the Writ Should Issue.....	1
A. The petition should be decided on its merits because it raises a frequently litigated point that has evaded review.....	1
B. Standard of Review	4
C. Procedural History in District Court.....	5
D. The district court’s ruling was well within its discretion.	8
1. The time, place, and examiner were identified.	9
2. The district court limited the examination’s scope.	11
3. Plaintiff cites two cases discussing manner and conditions.	12
4. The manner, conditions, and scope were sufficiently defined, consistent with persuasive authority.....	17
Conclusion	20

Table of Authorities

Cases

<i>Archon Corp. v. Dist. Ct.</i> , 133 Nev. 816, 407 P.3d 702 (2017).....	4
<i>B.D. v. Carley</i> , 704 A.2d 979 (N.J. App. 1998).....	15
<i>Carpenter v. Superior Ct.</i> , 141 Cal. App. 4th 249 (2006)	14, 15, 17
<i>Club Vista Fin. Servs. v. Dist. Ct.</i> , 128 Nev. 224, 276 P.3d 246 (2012) ...	2
<i>Cotter v. Dist. Ct.</i> , 134 Nev. 247, 416 P.3d 228 (2018).....	4
<i>Executive Mgmt., Ltd. v. Ticor Title Ins. Co.</i> , 118 Nev. 46, 38 P.3d 872 (2002)	9
<i>Hankins v. Wheeler</i> , 2026 U.S. Dist. LEXIS 19873, 2026 WL 251694 (E.D. La. January 30, 2026)	18, 19
<i>Hertenstein v. Kimberly Home Health Care, Inc.</i> , 189 F.R.D. 620 (D. Kan. 1999).....	10, 13, 14, 17
<i>Las Vegas Sands Corp. v. Dist. Ct.</i> , 130 Nev. 578, 331 P.3d 876 (2014)..	3
<i>Mapes v. Dist. Ct.</i> , 822 P.2d 91 (Mont. 1991)	15
<i>McKisset v. Brentwood BWI One, LLC</i> , 2015 U.S. Dist. LEXIS 162672, 2015 WL 8041386 (D. Md. December 4, 2015).....	18
<i>Mona v. Dist. Ct.</i> , 132 Nev. 719, 380 P.3d 836 (2016).....	5
<i>Newell v. Engel</i> , 899 P.2d 273 (Colo. 1994)	11
<i>Oxbow Constr., LLC v. Dist. Ct.</i> , 130 Nev. 867, 335 P.3d 1234 (2014)....	2
<i>Ragge v. MCA/Universal</i> , 165 F.R.D. 605 (C.D. Cal. 1995)	17, 18
<i>Raggio v. Dist. Ct.</i> , 136 Nev. 172, 460 P.3d 969 (2020).....	2
<i>Sauer v. Burlington Northern Railroad</i> , 169 F.R.D. 120 (D. Minn. 1996)	10
<i>Scheriff v. C.B. Fleet Co.</i> , 2008 U.S. Dist. LEXIS 54189, 2008 WL 2434184 (E.D. Wis. June 16, 2008)	16

<i>Schlagenhauf v. Holder</i> , 379 U.S. 104 (1964)	16
<i>Simms v. Dist. Ct.</i> , 68 P.3d 678 (Mont. 2003).....	16
<i>Union Pacific Railroad v. Botsford</i> , 141 U.S. 250 (1891).....	16
<i>Yarosevich v. Toyota</i> , Civil No. 05-cv-182, 2008 U.S. Dist. LEXIS 54276 (D.N.H. June 5, 2008).....	16

Statutes

California Code of Civil Procedure § 2032.320	14, 15, 17
NRS 34.170.....	1

Rules

CRCP 35	11
FRCP 35.....	passim
NRCP 35	passim

Treatises

Wright, Miller, & Marcus, FEDERAL PRACTICE & PROCEDURE, § 2236 (2d ed. 1994).....	18
--------------------------------------------------------------------------------------	----

Attorney's Certificate of Compliance

1. I certify that this brief complies with formatting, typeface, and type-style requirements of NRAP 32(a)(4)-(6) because it was prepared in Microsoft Word 365 with a proportionally spaced, 14-point Century font.
2. The brief also complies with NRAP 32(a)(7)(ii) because, excluding parts exempted by NRAP 32(a)(7)(C), it contains 3,574 words.
3. I certify that I have read this brief. It is not frivolous or interposed for any improper purpose. It complies with all applicable Nevada Rules of Appellate Procedure, including NRAP 28(e). I understand that I may be subject to sanctions if the accompanying petition is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 28th day of April, 2026.



BY: /s/ Michael P. Lowry
MICHAEL P. LOWRY
Nevada Bar No. 10666
Attorneys for Las Vegas Defense
Lawyers

NRAP 26.1(a) Disclosure

The undersigned counsel of record certifies that the following are persons and entities, as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

1. Parent Corporation: None.
2. Publicly held company that owns 10% or more of the party's stock:
None.
3. Law firms who have appeared or are expected to appear for Las Vegas Defense Lawyers: Wilson Elser Moskowitz Edelman & Dicker, LLP

DATED this 28th day of April, 2026.



BY: /s/ Michael P. Lowry
MICHAEL P. LOWRY
Nevada Bar No. 10666
Attorneys for Las Vegas Defense
Lawyers

Identification of Amicus Curiae

Las Vegas Defense Lawyers (“LVDL”) is a professional organization of civil defense lawyers based in Las Vegas. One of LVDL’s purposes is to provide a balanced defense perspective regarding civil litigation. It is in this capacity that LVDL chose to submit an amicus brief.

Requests for and the terms of physical or mental examinations under NRCP 35 are some of the most frequently litigated points for LVDL’s members. Disputes substantively like this one were ubiquitous when Judge Bulla was a Discovery Commissioner, and they are still ubiquitous. Answering this petition will not resolve all the disputed issues that are so frequently litigated, but it might help narrow the list. Appellate guidance on this point will aid LVDL’s members, litigants, and district courts.

Per NRAP 28(c)(5), LVDL’s counsel authored this brief in whole. No person other than LVDL, its members, or its counsel contributed money or other consideration intended to fund preparing or submitting this brief.

Certificate of Service

Per Rule 25(c), I certify that on April 28, 2026, **Las Vegas Defense Lawyers' Amicus Brief Supporting Real Parties in Interest** was served via electronic means by operation of the Court's electronic filing system to all parties registered for service. I further certify a copy of this petition was mailed as follows:

The Honorable Jacob Reynolds
District Court, Department 29
200 Lewis Avenue
Las Vegas, NV 89155

BY: /s/ Michael P. Lowry

Relief Sought

LVDL respectfully requests that the Court reach the merits and affirm the order granting a NRCP 35 examination. Further, although Steven Candelaria is named as a petitioner, the order at issue affects only Maurissa Graham.

Issue Presented

1. The petition ultimately presents just one disputed issue. When requesting a mental or physical examination per NRCP 35, does NRCP 35(a)(2)(B)'s "manner, conditions, and scope of the examination" language require the moving party, and the district court's order, to specifically identify each test, procedure, and question that might be utilized at the examination?

Why the Writ Should Issue

- A. **The petition should be decided on its merits because it raises a frequently litigated point that has evaded review.**

Writ relief is available when there is no "plain, speedy and adequate remedy in the ordinary course of law."¹ "Because an appeal from a final judgment or order is ordinarily an adequate remedy, in

¹ NRS 34.170.

most cases, we decline to exercise our discretion to consider writ petitions challenging interlocutory district court orders.”² Nevada’s appellate courts “generally will not exercise our discretion to review discovery orders through” writ petitions.³

There are two general exceptions. The first is case specific.

“Although we generally decline to review a discovery order through a petition for extraordinary relief, we may exercise our discretion to do so if the challenged discovery order is likely to cause irreparable harm and a later appeal would not effectively remedy” the disputed issue.⁴ The case specific exception is inapplicable here because Graham identifies no irreparable harm. If a NRCP 35 examination exceeds the permitted scope, Graham can later move to exclude the information gathered outside the allowed scope. However the district court rules, Graham can then challenge those rulings via a later appeal just as Life Time could challenge in a later appeal any restrictions the district court puts on the examination. So, ordinarily a petition challenging an order under NRCP

² *Oxbow Constr., LLC v. Dist. Ct.*, 130 Nev. 867, 872, 335 P.3d 1234, 1238 (2014).

³ *Club Vista Fin. Servs. v. Dist. Ct.*, 128 Nev. 224, 228, 276 P.3d 246, 249 (2012).

⁴ *Raggio v. Dist. Ct.*, 136 Nev. 172, 174, 460 P.3d 969, 972-973 (2020).

35(a)(2)(B) would not merit extraordinary relief, whether for the plaintiff being examined or the defendant seeking the examination. Ruling otherwise not only is inconsistent with the availability of an appeal, but it would also unleash a flood of petitions from personal injury cases, delaying those cases and substantially increasing the appellate courts' workload.

Graham's argument for irreparable harm primarily overemphasizes her privacy interests. However, Graham admittedly put her mental health at issue, creating a limited waiver. The district court balanced her remaining privacy interests against Life Time's need for information to evaluate the claims against it.

The second exception to the general presumption against reviewing discovery orders via writ petitions is advisory mandamus. "Nevertheless, in certain cases, consideration of a writ petition raising a discovery issue may be appropriate if an important issue of law needs clarification and public policy is served by this court's invocation of its original jurisdiction."⁵ Las Vegas Defense Lawyers asserts advisory

⁵ *Las Vegas Sands Corp. v. Dist. Ct.*, 130 Nev. 578, 581, 331 P.3d 876, 878 (2014).

mandamus is appropriate here. Advisory mandamus “may be appropriate when an important issue of law needs clarification and considerations of sound judicial economy and administration militate in favor of granting the petition.”⁶ It is used “to address the rare question that is likely of significant repetition prior to effective review, so that our opinion would assist other jurists, parties, or lawyers.”⁷

The question this petition presents has been subject of significant repetition for many years but has evaded appellate review. It was a topic of perpetual motions while Judge Bulla was a Discovery Commissioner, and it remains a perpetual topic now. Litigants and lawyers throughout the state deal with it every day. Guidance would be beneficial.

B. Standard of Review

“[D]iscovery rulings are reviewed for an abuse of discretion.”⁸
“When interpreting Nevada’s Rules of Civil Procedure, we turn to the rules of statutory interpretation. Even in the context of a writ petition,

⁶ *Archon Corp. v. Dist. Ct.*, 133 Nev. 816, 820, 407 P.3d 702, 706 (2017).

⁷ *Id.* at 822-23, 407 P.3d at 708.

⁸ *Cotter v. Dist. Ct.*, 134 Nev. 247, 249, 416 P.3d 228, 231-232 (2018).

statutory interpretation is a question of law that this court reviews de novo.”⁹ But factual findings are given deference.¹⁰

C. Procedural History in District Court.

Candelaria and Graham filed their complaint on September 29, 2023.¹¹ To summarize, they allege they were at Life Time Fitness’ pool during a windy day. Due to a gust of wind, an “umbrella flew with such force and speed that it stabbed Plaintiff CANDELARIA in the leg, before smashing into Plaintiff GRAHAM’s head.”¹² The operative complaint was filed on July 10, 2025. It added further factual allegations about the umbrella, but the operative facts did not change.¹³ It alleged causes of action entitled 1) negligence; 2) gross negligence; and 3) negligent hiring, training, and supervision.

Relevant to this petition, on December 22, 2025, Life Time Fitness moved to reopen discovery and for a mental examination of Graham per NRCP 35.¹⁴ Life Time specifically sought a “psychological/psychiatric

⁹ *Mona v. Dist. Ct.*, 132 Nev. 719, 725, 380 P.3d 836, 840 (2016) (cleaned up).

¹⁰ *Id.* at 250, 416 P.3d at 232.

¹¹ Petitioner’s Appendix Vol. 1 at 0001.

¹² *Id.* at 0002:10-13.

¹³ *Id.* at 0029, ¶¶ 8-19.

¹⁴ *Id.* at 0047.

evaluation of Graham, based upon Plaintiff's new disclosures of Graham's recent mental health treatment."¹⁵ It proposed Mark Mills, M.D. as the psychiatric examiner.¹⁶ Life Time stated Dr. Mills' "mental examination would be limited to investigating Graham's psychiatric condition."¹⁷ "The proposed mental examination ... would consist of two assessments, and be performed via video conference...."¹⁸

Graham opposed, but the district court granted the motion in an order filed on March 4, 2026. Relevant to this petition, the district court concluded, "new medical care has now been provided, disclosed, and will be relied upon by a treating physician at trial for his opinion – none of which was disclosed before the expert deadline. Accordingly, the Rule 35 examination shall be permitted."¹⁹ "During oral argument, Plaintiff's counsel asked that the specific types of tests be disclosed prior to the exam. The specific assessments will not be disclosed prior to the exam.

¹⁵ *Id.* at 0055:15-17.

¹⁶ Petitioner's Appendix Vol. 2 at 308:14-17 and 327-357.

¹⁷ *Id.* at 308:18.

¹⁸ *Id.* at 308:14-15.

¹⁹ *Id.* at 363:4-6.

The Court finds any issues with the scope of the examiner's opinions is better suited for motions in limine."²⁰

On March 9, 2026, the parties then entered a stipulation as to the NRCP 35 examination. They agreed the examiner would be Mark Mills, the examiner identified in Life Time's briefing,²¹ the examination would occur via videoconference,²² it would occur on March 18, 2026, and last for 4.5 hours.²³ The stipulation then defined the examination's scope. "The nature of this psychiatric exam is such that there will be questionnaires/tests for Plaintiff to fill out during the exam...."²⁴ It also limited that scope. "The examiner's findings and conclusions will be limited in scope in accordance with the Court's order reopening discovery to allow for the mental examination, which limits the mental examiner to offering rebuttal opinions to those of Dr. Patel, Graham's treating psychiatrist."²⁵

Graham then filed this petition on March 11, 2026.

²⁰ *Id.* at 363, ¶ 6.

²¹ Life Time's Appendix Vol. 1 at RA 0002 ¶ 2.

²² *Id.*

²³ *Id.* at ¶ 3.

²⁴ *Id.* at RA 0002 at ¶ 5.

²⁵ *Id.* at RA 0003 at ¶ 14.

D. The district court's ruling was well within its discretion.

NRCP 35(a)(1) states a district court may order “a party whose mental or physical condition ... is in controversy to submit to a physical or mental examination by a suitably licensed or certified examiner.” Graham does not dispute she has put her mental condition in controversy. Nor does she dispute the qualifications of Life Time's proposed examiner. NRCP 35(a)(2)(A) states a motion for examination requires good cause. Graham does not dispute good cause is present.

Instead, Graham's principal argument is the district court abused its discretion “by granting a compelled Rule 35 examination without requiring [Life Time] to describe the exam with particularity and without itself specifying the time, place, manner, conditions, and scope of the exam, as NRCP 35 requires.”²⁶ This is a reference to NRCP 35(a)(2)(B), which states: “The order must specify the time, place, manner, conditions, and scope of the examination, as well as the person or persons who will perform it.”²⁷

²⁶ Petition at 1.

²⁷ NRCP 35(a)(2)(B).

1. The time, place, and examiner were identified.

Graham asserts the district court abused its discretion because the March 4, 2026, order does not expressly specify the time, place, or person performing it. As to the time, the district court gave the parties scheduling flexibility. “The examination will be conducted on a date to be determined by the parties, and the parties will cooperate in good faith to set the examination.”²⁸ As to place, it was not identified in the order, but Life Time’s motion specified the examination would occur via videoconference.²⁹ As to the person performing it, Life Time’s briefing identified the proposed examiner.

It is important that district courts have the discretion when addressing these points. Federal courts considering them have noted the tension between literal compliance with the rule and the functional reality of litigation.³⁰ *Sauer v. Burlington Northern Railroad*

²⁸ Petitioner’s Appendix Vol. 2 at 363, ¶ 5.

²⁹ *Id.* at 308:14-15.

³⁰ FRCP 35(a)(2)(B) substantively mirrors NRCP 35(a)(2)(B). “Federal cases interpreting the Federal Rules of Civil Procedure are strong persuasive authority, because the Nevada Rules of Civil Procedure are based in large part upon their federal counterparts.” *Executive Mgmt., Ltd. v. Tigor Title Ins. Co.*, 118 Nev. 46, 53, 38 P.3d 872, 876 (2002) (quotation and citation omitted).

acknowledged and discussed that tension. “Strictly construed, Rule 35(a) ... would require that we ‘specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.’”³¹ But those terms are “routinely deferred to the parties so that they might accommodate each other’s interests and the Plaintiff’s availability. As a consequence, we do not incorporate such specific terms in this Order but, absent agreement by the parties, the Court will be prepared to do so.”³² Other courts reach the same conclusion. “Deferring this task to the parties permits them to better accommodate each other’s interests, as well as the availability of the physician and the party to be examined.”³³

The district court’s solution is like one that Colorado’s Supreme Court affirmed. In *Newell v. Engel*, the plaintiff asserted the order allowing the psychological examination was insufficiently specific. The relevant part of the order stated: “Plaintiff is hereby ordered to make herself available for psychological testing by [named psychologist] at a

³¹ 169 F.R.D. 120, 124 n.4 (D. Minn. 1996).

³² *Id.*

³³ *Hertenstein v. Kimberly Home Health Care, Inc.*, 189 F.R.D. 620, 623 (D. Kan. 1999).

mutually convenient time, and for psychiatric evaluation by [named psychiatrist] at a mutually convenient time.”³⁴ The order’s scope “was clarified in a hearing held on February 8, 1993, at which counsel indicated the process had been discussed with plaintiff’s counsel. Further, plaintiff raised no objection on this ground before the testing occurred.”³⁵ These efforts satisfied CRCP 35.

The district court’s order was within that discretion. But if the order was inadequate, the parties’ subsequent stipulation clarified the time, place, and person performing it. It would occur on March 18, 2026, starting at 10:30 a.m., last for 4.5 hours, and would be conducted by Mark Mills.³⁶ NRCP 35(a)(2)(B)’s time, place, and examiner requirements were satisfied either by the order or the stipulation.

2. The district court limited the examination’s scope.

Graham also asserts the district court’s order did not sufficiently specify the examination’s scope as NRCP 35(a)(2)(B) requires. She contends the district court must limit the examination “to the

³⁴ 899 P.2d 273, 276, (Colo. 1994).

³⁵ *Id.*

³⁶ Life Time’s Appendix Vol. 1 at RA 0002 ¶¶ 2-3.

psychiatric issues genuinely raised by Dr. Patel’s treatment, diagnoses, and opinions.”³⁷

But that is what the district court did. Its order stated, “[t]he Rule 35 examination is to be conducted, and any expert reports are to be issued, solely in response to the treatment, diagnoses, and findings in the medical records of Patel Psychiatry and any disclosed opinion of Dr. Patel.”³⁸ The parties further stipulated the district court’s order “limits the mental examiner to offering rebuttal opinions to those of Dr. Patel, Graham’s treating psychiatrist.”³⁹

Graham’s scope arguments do not identify an abuse of discretion.

3. Plaintiff cites two cases discussing manner and conditions.

Graham’s primary contention is Life Time must “provide a detailed description of the proposed examination..., including the tests and procedures to be used.”⁴⁰ Her petition cites a variety of cases, but just two address this point, and neither supports her.

³⁷ Petition at 4.

³⁸ Petitioner’s Appendix Vol. 1 at 363 ¶ 3.

³⁹ Life Time’s Appendix at RA 0003 ¶ 14.

⁴⁰ Petition at 4.

Hertenstein v. Kimberly Home Health Care, Inc. noted that if parties seeking a Rule 35 examination do not “provide the necessary details,” they “risk denial of their motions solely on grounds that they failed to provide adequate details of the examination.”⁴¹ The defendant there satisfied the scope requirement. The defendant “wants a psychiatric evaluation of plaintiff as to her claims of emotional distress. This defines the scope of the examination.”⁴²

Hertenstein specifically considered and rejected Graham’s argument. The plaintiff there wanted the examiner “to disclose prior to the examination the nature of the questions he intends to ask and what tests he plans to administer.”⁴³ The court called that “unworkable.”⁴⁴ “An examiner cannot reasonably determine all questions beforehand, including follow-up questions.”⁴⁵ The same analysis applied to the request “for prior disclosure of questions or tests. It would serve no

⁴¹ 189 F.R.D. 620, 623 (D. Kan. 1999).

⁴² *Id.* at 624.

⁴³ *Id.* at 626.

⁴⁴ *Id.*

⁴⁵ *Id.*

purpose to require the selected physician to select, and disclose, the specific tests to be administered in advance of the examination.”⁴⁶

Carpenter v. Superior Ct. also considered an argument that the trial court’s order did not identify the tests and procedures. The order stated “*standardized written psychological tests shall be administered to [the plaintiff]. No standardized written psychological tests are specifically prohibited from the examination, because plaintiff’s opposition has cited no authority in support of such a position.*”⁴⁷

The key to *Carpenter* is that it was decided under California law, specifically California Code of Civil Procedure § 2032.320. *Carpenter* noted § 2032.320(d) required the information plaintiff wanted. “An order granting a physical or mental examination *shall specify* the person or persons who may perform the examination, as well as the time, place, manner, *diagnostic tests and procedures*, conditions, scope and nature of the examination.”⁴⁸ *Carpenter* concluded “the plain meaning of section 2032.320 is that the trial court must ‘specify the ...

⁴⁶ *Id.* at 626.

⁴⁷ 141 Cal. App. 4th 249, 257 (2006) (emphasis in original).

⁴⁸ *Id.* at 259 (quoting § 2032.320(d)) (emphasis added by court). The statute still contains this requirement.

diagnostic tests and procedures’ of the mental examination by naming the tests and procedures to be performed.”⁴⁹

Carpenter is inapplicable in Nevada. NRCP 35(a)(2)(B) contains no equivalent language, nor does FRCP 35(a)(2)(B). *Carpenter* noted that § 2032 was originally based on FRCP 35(a), but the diagnostic tests and procedures requirement was added in a 1986 amendment.⁵⁰ Thus, *Carpenter* concluded “Rule 35(a) does not require what is required by section 2032.320,” and federal case law interpreting FRCP 35(a) was not persuasive.⁵¹

The other cases Graham cites do not address this issue at all. *B.D. v. Carley* concerned whether a plaintiff could audio record an examination and instructed the trial court to enter “an order permitting plaintiff to employ an unobtrusive recording device during the examination.”⁵² *Mapes v. Dist. Ct.* asked whether a personal injury plaintiff is “entitled to have an attorney present during any interview of the plaintiff conducted by a psychiatrist retained by the defendant?”⁵³

⁴⁹ *Id.* at 261-262.

⁵⁰ *Id.* at 262.

⁵¹ *Id.* at 263.

⁵² 704 A.2d 979, 981 (N.J. App. 1998).

⁵³ 822 P.2d 91, 95 (Mont. 1991).

Scheriff v. C.B. Fleet Co. also addressed observers or recordings at an examination, and concluded “I am not inclined to order as a condition of his examination that Dr. Lynch allow the presence of a third party or a recording device at his interview.”⁵⁴ *Simms v. Dist. Ct.* evaluated whether a defendant had demonstrated good cause for the examination with the proposed examiner, but it never discussed an argument that the district court’s order insufficiently identified the tests at issue.⁵⁵ *Yarosevich v. Toyota* questioned whether the defendant had demonstrated good cause and if the proposed examiner was qualified, but not whether the tests themselves must be identified.⁵⁶ *Schlagenhauf v. Holder* examined whether and under what circumstances a defendant could be subject to a mental or physical examination under FRCP 35. But it did not discuss the scope argument Plaintiff raises here.⁵⁷ Finally, *Union Pacific Railroad v. Botsford* was decided in 1891, before either FRCP or NRCP 35 existed.⁵⁸

⁵⁴ 2008 U.S. Dist. LEXIS 54189, *8, 2008 WL 2434184 (E.D. Wis. June 16, 2008).

⁵⁵ 68 P.3d 678 (Mont. 2003).

⁵⁶ Civil No. 05-cv-182, 2008 U.S. Dist. LEXIS 54276 (D.N.H. June 5, 2008).

⁵⁷ *Schlagenhauf v. Holder*, 379 U.S. 104, 122 (1964).

⁵⁸ 141 U.S. 250 (1891).

4. The manner, conditions, and scope were sufficiently defined, consistent with persuasive authority.

The federal case law that *Carpenter* rejected because of the differences between § 2032 and FRCP 35(a) is persuasive in Nevada because NRCP 35(a)(2)(B) and FRCP 35(a)(2)(B) are identical on this point. *Hertenstein* rejected Graham’s arguments, so have other courts applying FRCP 35(a)(2)(B).

Ragge v. MCA/Universal concerned a request for a mental examination and plaintiff’s counterdemand “that the examiner disclose in advance to plaintiff’s counsel the specific tests to be conducted at the examination....”⁵⁹ *Ragge* noted since the examination is “the only opportunity for a defendant to have a plaintiff examined by defendant’s expert, some preference should be given to allowing the examiner to exercise discretion in the manner and means by which the examination is conducted, provided it is not an improper examination.”⁶⁰ “It would serve no purpose to require [the examiner] to select, and disclose, the specific tests to be administered in advance of the examination.”⁶¹ The

⁵⁹ 165 F.R.D. 605, 607 (C.D. Cal. 1995).

⁶⁰ *Id.* at 609.

⁶¹ *Id.*

court specifically identified the plaintiff's potential remedy. "If the examination is improper, it may be excluded at trial."⁶²

In *McKisset v. Brentwood BWI One, LLC* the plaintiff insisted "that she be provided notice regarding the battery of tests to be administered at her IME...."⁶³ The request was denied. "[T]he majority of courts considering the adequacy of the scope of an IME's notice defer to the expertise of the examiner and permit routine examinations without requiring that the examiner specify the exact tests to occur."⁶⁴ "Only when an examining expert's advance description is so bare as to give insufficient indication of what the plaintiff is to expect will courts order that additional detail be provided."⁶⁵

The plaintiff in *Hankins v. Wheeler* argued "that he must be provided with a list of all potential examinations that may be conducted by Dr. Alsop so that he can properly assess the scope."⁶⁶ The court

⁶² *Id.* (citing Wright, Miller, & Marcus, FEDERAL PRACTICE & PROCEDURE, § 2236 (2d ed. 1994)).

⁶³ 2015 U.S. Dist. LEXIS 162672, *2, 2015 WL 8041386 (D. Md. December 4, 2015).

⁶⁴ *Id.* at *4-5 (collecting cases).

⁶⁵ *Id.* at *7.

⁶⁶ 2026 U.S. Dist. LEXIS 19873, *12-14, 2026 WL 251694 (E.D. La. January 30, 2026).

declined that request, echoing the analysis of other federal courts like discussed above. It also noted the plaintiff's remedy. "If any of her opinions or tests have exceeded the scope of the injuries claimed or her expertise, Hankins can seek to exclude her findings from any trial or dispositive motion in this matter."⁶⁷

If Nevada adopted the federal courts' analysis and applied it here, then the district court's order was well within its discretion because the order provided sufficient indication of what Graham should expect. It identified that the scope would be limited to a psychiatric evaluation.⁶⁸ The stipulation Graham approved also identified that it will be a psychiatric examination, and "[t]he nature of this psychiatric exam is such that there will be questionnaires/tests for Plaintiff to fill out during the exam...."⁶⁹ Graham's willingness to stipulate to this scope indicates it was adequate for her purposes. If the examination or report exceeds the permitted scope, then Graham's remedy is motions in limine.

⁶⁷ *Id.* at *16.

⁶⁸ Petitioner's Appendix Vol. 1 at 363 ¶ 3.

⁶⁹ Life Time's Appendix RA 0002 at ¶ 5.

Conclusion

Normally, a petition for a writ of mandamus as to the terms and conditions for an examination per NRCP 35 would not merit extraordinary relief. This case is no exception, but it does merit advisory mandamus based on the sheer frequency that the principal issue in this petition is litigated. The Court should reach the merits and deny the petition.

NRCP 35(a)(2)(B) requires enough detail to identify the examination's terms so both the examiner and examinee reasonably know what to expect. That threshold was met here. The detail NRCP 35(a)(2)(B) requires does not include specifically identifying each test, procedure, and question that might be utilized at the examination. Thus, the district court did not abuse its discretion.

DATED this 28th day of April, 2026.



BY: /s/ Michael P. Lowry
MICHAEL P. LOWRY
Nevada Bar No. 10666
Attorneys for Las Vegas Defense
Lawyers