

An employee brought a diversity suit against his employer in federal district court for intentional infliction of emotional distress. The employee claimed that the employer repeatedly engaged in conduct that caused the employee to suffer severe emotional distress that has resulted in physical manifestations. During discovery, the court issued a valid order compelling the employee to submit to a mental and physical examination by a licensed medical professional chosen by the employer. The employee refused to submit to the examination.

The employer's attorney has moved for sanctions against the employee.

Which of the following sanctions, if any, may the court order?

- A. None, because the employee has the right to choose the person who conducts the examination.
- B. None, because a court cannot compel a person to submit to a mental examination.
- C. Hold the employee in contempt of court.
- D. Stay the proceeding until the order for examination is obeyed.

## Explanation:

### Sanctions for violating discovery order

(FRCP 37(b))

Court location	Sanctions allowed
Where deposition occurred	<ul style="list-style-type: none"><li>• Hold in contempt of court</li></ul>
Where suit is pending	<ul style="list-style-type: none"><li>• Direct that certain facts be construed against violator</li><li>• Prohibit violator from offering certain evidence</li><li>• Strike pleadings in whole or in part</li><li>• Stay further proceedings until order is obeyed</li><li>• Hold in contempt of court*</li><li>• Dismiss claims in whole or in part</li><li>• Issue default judgment against violator</li><li>• Order payment of reasonable expenses (eg, attorney's fees) caused by violation</li></ul>

**FRCP** = Federal Rule of Civil Procedure.

\*Cannot be imposed for failing to comply with order for physical or mental examination.

During discovery, the **court where the lawsuit is pending** may **order a party** to undergo a **mental or physical examination** by a suitably licensed or certified examiner (**Choice B**). This court order is valid when:

- that party's mental or physical condition is in controversy
- the motion for the order is based on good cause *and*
- the order provides notice by specifying the time, place, manner, conditions, and scope of the exam, as well as the person(s) who will perform it.

If the **party fails to comply** with such a court order, as the employee did here, FRCP 37 allows the court to **impose certain sanctions** (see table above). Such sanctions include staying the proceeding until the order is obeyed.\*

\*Instead of or in addition to such sanctions, the court must order the noncompliant party, his/her attorney, or both to pay the other party's reasonable expenses (including attorney's fees) unless the noncompliance was substantially justified or the fees would be unjust.

**(Choice A)** The party to be examined does not have the right to choose who will perform the mental or physical examination. Instead, the party requesting the examination may choose the examiner unless the examined party has a valid objection. In that case, the court will appoint the examiner.

**(Choice C)** The court where the lawsuit is pending may generally hold a party in **contempt of court** for failing to comply with a court order that compels discovery. However, a party *cannot* be held in contempt for failing to comply with a discovery order that requires the party to undergo a mental or physical examination (as seen here).

**Educational objective:**

A federal court may impose an FRCP 37 sanction on a party who fails to comply with a court order requiring a mental or physical examination, including staying the proceeding until the order is obeyed. But the court cannot hold the noncompliant party in contempt of court for such a violation.

**References**

- Fed. R. Civ. P. 35 (physical and mental exams).
- Fed. R. Civ. P. 37(b) (sanctions for noncompliance with court's discovery order).
- 8B Charles Alan Wright et al., Federal Practice and Procedure § 2238 (3d ed. 2020) (explaining what sanctions may be issued against a party who fails to undergo a court-ordered mental or physical examination).