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# Neurophyschologist Exams in New Brunswick – What Are The Requirements?

**Reported Case:** *Fletcher v. Mitrovic*

**Citation:** 2009 NBQB 240

**At Issue:** What are the requirements for a defendant to obtain a court order that the plaintiff be examined by a neuropsychologist in New Brunswick?

**The Court:** New Brunswick Court of Queen's Bench

**Judgment Rendered:** Sept. 9, 2009

**Factual Summary:** The plaintiff claimed she had suffered a brain injury in a motor vehicle accident. The plaintiff retained two neuropsychologists who prepared expert reports to support this claim. The defendants brought a motion under Rule 36 of the Rules of Court requesting that the plaintiff be examined by a neuropsychologist retained by the defendants. Prior to the motion, the defendants had submitted the plaintiff's reports to a doctor along with a list of questions they would like the doctor to answer. The doctor responded with a letter stating that it would be 'very helpful' to retain a neuropsychologist to answer these questions.

**Decision:** A neuropsychologist is not a 'medical practitioner' as defined in Rule 36.01. The Court noted that the proper procedure would have been a two-step process – first, the defendants should have sought a court order authorizing a doctor to conduct a medical examination, and second, an order under Rule 36.05 authorizing the examining doctor to retain the services of the neuropsychologist. The defendants in this case did not proceed with the first step but instead sought to proceed directly to the second step. The court rejected the defendants' argument that although they had not complied with the procedure set out in Rule 36.05, the motion had still been brought in the spirit of Rule 36.

The court additionally noted that a motion under Rule 36 is discretionary, and in order to succeed the moving party must provide evidence to satisfy the court that an examination by a neuropsychologist is necessary to enable a medical practitioner to form and provide an opinion. The statement by the doctor that the services of a neuropsychologist would be 'very helpful' did not meet the evidentiary burden of proving it was necessary.

The court finally noted that the defendants' affidavit was deficient, observing that the words 'information and belief' are not 'magic words' which allow the deponent to bring hearsay and argument into the affidavit without explanation as to the source of the information or the reason for the deponent's belief.