

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

**IN RE: PROPOSED REPEAL OF RULE 37,
RULES OF THE TENNESSEE SUPREME COURT**

M2010-02373-SC-RL2-RL - Filed: November 17, 2010

ORDER

In June 2001, the Court adopted Rule 37 [Provisional], Rules of the Tennessee Supreme Court, establishing a mandatory mediation program for appeals in workers' compensation cases. As originally adopted by the Court, Rule 37 was to be effective from September 1, 2001 until August 31, 2004. In August 2004, the Court extended the term of the program by one year, ending on August 31, 2005. In August 2005, the Court adopted a revised Rule 37; the revised rule, in pertinent part, ended the provisional status of the rule and provided that the rule applied to all workers' compensation cases in which a notice of appeal was filed on or after September 1, 2001.

In 2004, the General Assembly amended Tenn. Code Ann. § 50-6-225(a) to provide that "in case of a dispute over or failure to agree upon compensation under the Workers' Compensation Law between the employer and employee or the dependent(s) of the employee, the parties shall first submit the dispute to the benefit review conference process provided by the division of workers' compensation." Thus, as a result of the amended statute, the parties were required to participate in mediation (i.e., a Benefit Review Conference) prior to the filing of a workers' compensation civil action. Rule 37, however, continued to require the parties to also engage in appellate mediation, following the filing of a notice of appeal.

Section 12 of Rule 37 provides, in pertinent part: "the efficacy of the procedures outlined herein [in Rule 37] shall be subject to evaluation by the Court." Consistent with Section 12, the Court is now considering whether requiring a second mediation as a part of the appeal process may be unduly burdensome on the litigants. Accordingly, the Court is considering the repeal of Rule 37 in its entirety, thereby cancelling the mandatory appellate mediation program established by the rule.

The Court hereby publishes the possible proposed repeal of Rule 37 and solicits written comments from the bench, the bar, and the public. The deadline for submitting written comments concerning the proposed repeal is Tuesday, January 18, 2011. Written comments should be addressed to:

Michael W. Catalano, Clerk
100 Supreme Court Building
401 Seventh Avenue North
Nashville, TN 37219-1407

and should reference the docket number set out above.

The Clerk shall provide a copy of this order to LexisNexis and to Thomson Reuters. In addition, this order shall be posted on the Tennessee Supreme Court's website.

IT IS SO ORDERED.

PER CURIAM