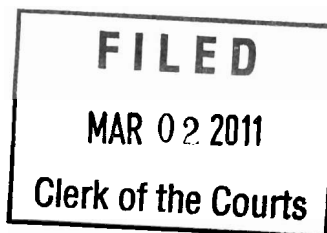


IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE



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

No. M2010-02373-SC-RL2-RL - Filed: March 2, 2011

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 tentatively concluded that requiring a second mediation as a part of the appeal process was unduly burdensome on the litigants. On November 17, 2010, the Court filed an order stating that the Court was considering the repeal of Rule 37 in its entirety, thereby cancelling the mandatory appellate mediation program established by the rule; the order solicited written comments on the proposed repeal of Rule 37 and set January 18, 2011 as the deadline for submitting written comments.

After due consideration, the Court hereby repeals Rule 37 in its entirety, effective upon the filing of this order. For all pending appeals governed by Rule 37, but in which the mediation process was not completed as of the filing of this order, the mediation process may be terminated, and the mediator and the parties are relieved of their responsibility to make any post-mediation filing previously required by Tenn. Sup. Ct. R. 37, § 11. The repeal of Rule 37 does not relieve the parties of their liability for payment of the cost of services rendered by a mediator pursuant to the Rule; Rule 37, § 10 shall be deemed to continue to apply to all cases in which such payment has not been made as of the filing of this order.

The Clerk is directed to send a copy of this order to the parties in each pending appeal of a workers' compensation case. The Clerk also 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