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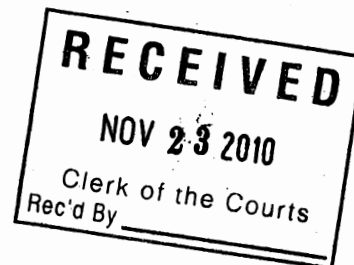
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M2010-02378-SQ-RLH
126

November 22, 2010

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



RE: Proposed Repeal of Rule 37

Dear Mr. Catalano:

I have done a number of workers' compensation appeals over the years. In each of those, since 2001, I have participated in the mandatory mediation. I do not recall any of the cases being resolved during the mediation process; or even a single issue being resolved during the mediation process.

From my perspective as an attorney for plaintiffs in this matter, it adds a cost to the employee and there has been absolutely no benefit to the injured working employee as a result of the required mediation during the appellate process.

I would strongly recommend repeal of Rule 37. If the parties want to engage in voluntary mediation, that of course is always a possibility and would have a greater likelihood of success. However, the current process is costly and wastes both time resources and monetary resources.

Sincerely yours,

RUSSELL D. HEDGES

RDH:cao



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December 30, 2010

The Honorable Michael Catalano
Clerk, Tennessee Supreme Court
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Nashville, TN 37219

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

No. M2010-02373-SC-RL2-RL

Dear Mike:

Attached please find an original and six copies of the Comment of the Tennessee Bar Association in reference to the above matter.

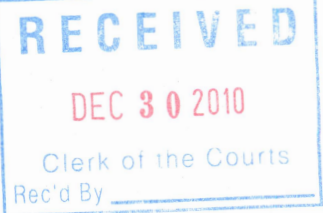
As always, thank you for your cooperation. I remain,

Very truly yours,

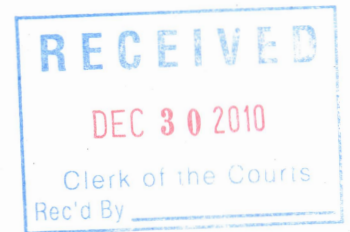
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cc: Sam D. Elliott, President, Tennessee Bar Association
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IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE



IN RE: PROPOSED REPEAL OF)
RULE 37, RULES OF THE) No. M2010-02373-SC-RL2-RL
TENNESSEE SUPREME)
COURT)
)
)

COMMENT OF THE TENNESSEE BAR ASSOCIATION

The Tennessee Bar Association (“TBA”), by and through its President, Sam D. Elliott; General Counsel, William L. Harbison; Chair of its Appellate Practice Section, Jeffrey A. DeVasher; Chair of its Tort and Insurance Practice Section, R. Kreis White; and Executive Director, Allan F. Ramsaur, files this comment in support of the repeal of Tennessee Supreme Court Rule 37 establishing a mandatory mediation program for appeals in workers compensation cases.

On November 17, 2010, this Honorable Court ordered publication of a proposed repeal of Rule 37 of the Rules of the Tennessee Supreme Court. The comment deadline for this proposed repeal is Tuesday, January 18, 2011.

The Tennessee Bar Association requested comments from its Litigation, Tort and Insurance Practice, Appellate Practice and Dispute Resolution Sections regarding this proposal. The Appellate Practice and Tort and Insurance Practice Sections recommended repeal. This matter was considered by the TBA Executive Committee on Monday, December 13, 2010. The recommendation that the TBA support repeal of the rule was adopted.

While the adoption of the TN. Sup. Ct. R. 37 on mandatory appellate mediation was adopted prior to the provisions in TCA § 50-6-225(a) and would thus seem to duplicate the mediation process, the principal consideration behind the TBA's support for repeal of the rule is that mediations undertaken after a decision at the trial level seem to have limited utility because there has already been a decision. The party which prevailed below has little incentive to engage in meaningful mediation with the losing party.

For the foregoing reasons, the Tennessee Bar Association supports this repeal of the rule.

RESPECTFULLY SUBMITTED,

By: /s/ by permission

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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing has been served upon the individuals and organizations identified in Exhibit "A" by regular U.S. Mail, postage prepaid within seven (7) days of filing with the Court.


Allan F. Ramsaur

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