

IN THE SUPREME COURT OF TENNESSEE

1. AT NASHVILLE

IN RE: AMENDMENT TO SUPREME COURT RULE 37

Filed August 31, 2004

ORDER

In 2001, the Court adopted Rule 37 [Provisional], governing appellate mediation of workers' compensation appeals. The Rule provides for ongoing evaluation of the appellate mediation program by the participating parties and by the Court. In addition, Rule 37(1) currently provides that: "[t]his Provisional Rule 37 shall apply to cases in which a notice of appeal is filed on or after September 1, 2001, through August 31, 2004." After considering the evaluations submitted by parties to workers' compensation appeals, and after the Court's own review of the appellate mediation program, the Court concludes that the effective date of the Rule should be extended for one year and that the Rule should be amended, as set out below.

The Court hereby amends Rule 37(c)(1)(B) by deleting the current provision and replacing it with the following new provision:

(B) Any party may object to the mediation required by this rule if:

(i) mediation (not including a benefits review conference) was conducted prior to the trial of the case; or,

(ii) the appeal involves an unsettled question of law that cannot be resolved through the mediation process, in which case, counsel for all parties must file a joint motion stating the question of law presented and requesting that the appeal proceed without mediation. For purposes of this paragraph, "question of law" does not include routinely disputed worker's compensation issues, including the sufficiency of notice, causation, the permanence or extent of disability, and similar issues.

The foregoing two grounds are the only grounds upon which the mediation requirement under this rule may be suspended.

In addition, Rule 37(1) is amended to read: "This Provisional Rule 37 shall apply to cases in which a notice of appeal is filed on or after September 1, 2001, through August 31, 2005."

IT IS SO ORDERED.

FOR THE COURT:

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FRANK F. DROWOTA, III, CHIEF JUSTICE