

Salutation:
First: David
MI: J.
Last: Weimer
Org: Kramer & Frank, P.C.
MailingAddress1: 1125 Grand Boulevard, Suite 600
MailingAddress2:
City: Kansas City
State: Missouri
ZIP: 64106
EmailAddress: dweimer@lawusa.com
Phone: (816) 471-0030,
Fax: (816)472-0963
Appellate: Yes
Comments:

I support all of the Committee's proposed rule changes. I write to express my strong support for proposed Rule 32.1 regarding citation of so-called unpublished or nonprecedential opinions issued by the various courts of appeals. Our system of law is based on the common law, which arose from the guiding principle that like cases should be decided in a like manner. By refusing to consider certain opinions, the courts open themselves to charges of arbitrariness. I understand the basic argument of those who oppose such a rule, but do not find their reasoning persuasive. The very idea that some opinions were written in such an undisciplined fashion that the court should not have to answer for them undercuts the integrity of the system. And if, as the circuit courts claim, the opinions decide matters that are so routine and uncontroversial that nothing new can be gleaned from them, then no harm can come from citing them. Further, the courts should not be dissuaded from considering such opinions by the prospect of abuse. All rules, including the rules prohibiting such citation, are subject to abuse. Allowing the abusers to make policy is akin to the heckler's veto courts so decry in First Amendment cases. Those who abuse rules will continue to do so, but the courts have ample means to deal with such offenders. I think that allowing citation to so-called unpublished opinions--but allowing the petitioned court to decide the weight to give the authority--is the only solution that makes sense.

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