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Committee on Rues of Practice and Procedure
ATTN: Mr. Peter McCabe
Administrative Office of the U. S. Courts
One Columbus Circle NE
Washington, DC 20544

Re: Proposed FRAP 32.1

Dear Mr. McCabe:

We met many years ago when I was a United States Magistrate Judge. I am now a sole practitioner in Las Cruces, New Mexico. The sole practitioner of rural and small town America must handle almost anything which enters the door. Over the years a sole practitioner may be able to refuse certain categories of cases, but even in the more undesirable areas of sole practice, for me divorces, employees of good business clients or good clients dictate that I "never say never" in an area of law. A sole practitioner's children or grandchildren or, in my case, my secretary's children may occasionally romp in the office while the attorney is focusing on a brief to a court. Enjoying this ambiance of practice, the prospects of increasing the size of my law firm from one secretary/legal assistant to two is remote due to the economics of the sole practice of law.

It is for that reason that I oppose FRAP 32.1. I realize there is a great debate upon the usefulness of what the Ninth Circuit calls "memdispos". No matter which position I articulate, I am sure there will be a law professor who will provide well thought out opposition. I fall into the camp which believes them to be poor precedent and similar to district court unpublished decisions. My view of a court of appeals decision is one in which several judges have had an opportunity among themselves to review the work product of another judge. The practice in many circuits, including the Ninth which adjoins me on the west, is to devote less times to these opinions. Thus I see them as of little use and practically have little weight on an issue.

As professional responsibility, ethical competence and malpractice avoidance overrides practical considerations, I will have no choice but to regard these unpublished dispositions as

important as law review articles. That will impose the obligation on me to download and digest every one of these hundreds of opinions. I am obligated in my briefs to inform the court of the law, favorable and unfavorable. I must then distinguish the unfavorable from my situation.

Most of my clients are small businesses and individuals who already complain at the expense required to properly brief and prepare litigation. My earnings are limited to the market price I can charge for my services times available hours to competently perform the required service for the individual client. Thus the extra work in briefing assures my ethical and professional responsibilities are met but must likely be performed without charge to the client. Given the extra time burden on me, my general transactions practice have to give. That however is the draw for my litigation practice. In the parlance area of practice of western water law, I soon will be unable to "prime the pump".

One and two lawyer firms are still the back bone of our legal system. For those reasons I oppose FRAP 32.1.

Thank you for consideration.

Very truly yours,

John A. Darden

JAD/tlb
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