

RECEIVED
12/19/03

03-AP-056

Pat Williams

12/19/2003 02:50 PM

To: Rules_Comments@ao.uscourts.gov

cc:

Subject: FRAP 32.1

As a sitting bankruptcy judge I would like to adversely comment on the proposed FRAP 32.1 which would prohibit appellate courts from restricting the citation of unpublished opinions.

At the circuit level the decision to refrain from publishing is based upon a conclusion that the opinion does not expand, change, or provide any new insight to an existing legal principle. In other words, the legal principle at issue has been articulated in prior published opinions and this unpublished opinion adds nothing to the analysis or development of that principle. It is highly unlikely that citing the unpublished opinion would be of any help to anyone.

Unpublished opinions do often contain generalized statements of accepted legal principles. I sit in the 9th circuit which averages 4,000 unpublished opinions a year. This rule would seem to create a heavy burden on the court of appeals with no discernable benefit. In the bankruptcy appeals most cases involve a debtor with limited financial resources and various creditors including large national financial institutions. There is often a great disparity in access to legal resources, particularly in consumer cases. National creditors may easily spend the time and money necessary to search the 4,000 annual unpublished opinions to find those which contain generalized statements favorable to whatever legal principle the creditor is arguing. Counsel for the consumer debtor however, who has a serious risk of receiving little or no compensation, simply cannot afford to devote the efforts necessary to thoroughly respond to such citations. This proposed rule would widen the gap between the legal resources available to national creditors and those available to debtors, particularly consumer debtors.