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Comments:

I write in opposition to proposed Federal Rule of Appellate Procedure 32.1. In my opinion, the effect of the proposed rule will be for the already overburdened circuit court judges to spend more time on unpublished opinions if they were to be citable and thereby reduce the thought given to published opinions. This will invariably result in a dilution in the craftsmanship and quality of reported decisions. There is always a need for quality opinion writing, but at least I don't perceive a pressing need to expand the number of citable opinions. Indeed, from a practitioner's perspective, the proliferation of both online and print resources during the 26 years I have been in practice has already started to create "information overload." To add unpublished opinions to the sources which a prudent lawyer must consider in preparing briefs can only result in a further increase to already spiraling litigation costs and, conversely, disadvantage pro per parties who will not have easy access to these new "authorities."

The Advisory Committee Note pointedly observes that the proposed rule "says nothing about what effect a court must give to one of its unpublished' opinions or to the 'unpublished' opinions of another court." As a practical matter, I think this is wishful thinking. To even suggest that unpublished opinions may be treated in the same "persuasive" class as Shakespearean sonnets or law review articles is mere folly. Invariably, lawyers and lower court judges will give more weight to unpublished opinions then they at most times deserve and, at least when there are no published opinions on point, will probably come to be viewed as binding precedent by most lawyers and judges.

Accordingly, for these and other reasons, I respectfully request the proposed Federal Rule of Appellate Procedure 32.1 not be approved.

Respectfully submitted,

Robert A. Merring
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No. 77429

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