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03-AP-102

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 Appellate: Yes  
 Comments:

I am writing to comment on proposed Federal Rule of Appellate Procedure 32.1. I do not support the proposed rule. "Unpublished" cases have not historically been written in order to provide legal authority. This means that the opinions themselves do not enable a practitioner to conduct the type of analysis that sheds light upon a case before the court. Courts have not used these unpublished opinions to articulate new legal principles. Further, these summary dispositions do not set forth a meaningful factual or procedural history of the case. Because of these issues, it will be difficult for attorneys to distinguish or analogize the cases in a meaningful way. Large numbers of cases have already been decided by the courts of appeal without a thought to citation or precedential value. The proposed rule would change the playing field, and open thousands of these cases to scrutiny and citation that they were never meant to face.

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